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Pennsylvania State Trials:

CONTAINING THE

IMPEACHMENT, TRIAL, AND ACQUITTAL

OF

FRANCIS HOPKINSON,

AND

JOHN NICHOLSON, Esquires.

THE FORMER BEING

JUDGE OF THE COURT OF ADMIRALTY,

AND THE LATTER,

THE COMPTROLLER-GENERAL

OF THE

COMMONWEALTH OF PENNSYLVANIA.

VOL. I. *in one*

—VIRESCQUE ACQUIRIT EUNDO. VIRG.

PHILADELPHIA:

PRINTED BY FRANCIS BAILEY,
AT YORICK'S HEAD, No. 116, HIGH-STREET, FOR
EDMUND HOGAN.

M,DCC,XCIV.

No. 82.

District of Pennsylvania, to wit:—

(L.S.)

BE IT REMEMBERED that on the twentieth day of January in the nineteenth year of the Independence of the United States of America, Edmund Hogan of the said District hath deposited in this Office the Title of a Book, the right whereof he claims as Proprietor in the words following, to wit—
“The Pennsylvania State Trials; containing the Impeachment, Trial, and Acquittal of Francis Hopkinson, and John Nicholson, Esquires, the former being Judge of the Court of Admiralty, and the latter the Comptroller-General of the Commonwealth of Pennsylvania. Vol. I. —Viresque acquirit eundo. Virg.” in conformity to the Act of the Congress of the United States, intituled “An Act for the encouragement of learning by securing the copies of maps, charts, and books to the authors and proprietors of such copies during the times therein mentioned.”

SAMUEL CALDWELL, *Clerk of the
District of Pennsylvania.*

Dedication.

To the only legitimate sovereign of the
UNITED STATES, THE PEOPLE.

CITIZENS,

Inasmuch as all power originated with, and is inherent in the People, which hath been assumed for many ages by individuals commonly called kings, princes, tetrarchs, &c. of which power these select beings have seldom failed to make a bad use; and inasmuch as during the reigns, and particularly within the vortex of the dominion of those persons, books of the same tendency with the following had frequently been dedicated to them, or to some great personage who occasionally gave liberal portions of the loaves and fishes to the writers, or buoyed them up by their influence and patronage.

I have

I have therefore thought proper to dedicate my work to you, in preference to any single individual; not from the expectation of patronage, not from the desire of reward, but from a sincere impression in your favour, from a consciousness of your supremacy, excellence and majesty, and a wish to contribute my little stock to the general good: I hope such of you as will peruse the following sheets will judge for yourselves, and as in every other case let facts and reason be your only authorities.

I am, Citizens,

Your well-wisher,

EDMUND HOGAN.

PHILADELPHIA, January, 1795.

PREFACE.



P R E F A C E.

IT is commonly expected that the Author or Editor of every work would furnish the public with some account of the performance in the Preface; this will not be done here at length, as the work is before you and will answer for itself. It may be remarked that the Preface would be a suitable place to give a sketch of the lives of the two gentlemen, whose trials are here published, to this it can be answered that the Editor never saw Mr. Hopkinson, now deceased; and it would be very improper to write any thing respecting the life of the other gentleman, who is yet on the stage: But the works of Mr. Hopkinson are published, and his character is well known to be not inferior to any, and having very few of equal merit among the literati of the present century. By the present publication it will also appear, that he, like other people, had political enemies, who were equally disappointed at his acquittal in the year 1780, as others have since been at the acquittal of Mr. Nicholson in the year 1794.

The documents herein published have been regularly compared with authentic copies laid before the Senate, whose permission to copy them the Editor had obtained during the interval from the 23d of March to the adjournment in April.

If any errors have crept into the work, let the reader be assured that great pains have been taken to prevent them, and that a work of this size and consequence

consequence cannot fail of being attended with many difficulties; that this was a new field of argument, and that every error communicated to the Editor from any of the Speakers, or from those concerned shall be duly attended to, and rectified in the next edition.

From the difference in the length of the work in the two trials, the latter of which the Editor attended throughout, and took down in short hand; and the former he only collected and compiled from papers, some in the possession of private gentlemen, and others with the public, the reader will judge how necessary this work is to the establishment of a complete history of the State-Trials of the Commonwealth of Pennsylvania, before the period passes when it can only be gathered from partial writers on one side or the other: As an evidence of the importance of this work, the Editor will be excused for introducing the following judicious report to the Senate of Pennsylvania, by their committee a few days before the adjournment in April 1794.

“ The committee to whom was referred the petition of Edmund Hogan, report—

“ That in their opinion the work in which the petitioner is engaged is entitled to encouragement from the Legislature, to hand down to posterity the doings of their forefathers, and to rescue from oblivion the most important transactions of the day in which we live, unembarrassed with quotations from obsolete, British or exotic statutes and corrupt precedents, will certainly command the smiles of every enlightened Legislator, of every Patriot, and is worthy the efforts of genius. In order therefore to further the designs of the petitioner, to assist him in the execution of his laudable undertaking, and to promote the diffusion of useful and important knowledge throughout
the

the commonwealth, recommend that the following resolution be adopted—

“Resolved, That the Governor of this commonwealth do subscribe in the name of the state for copies of Edmund Hogan’s work, entitled “State Trials,” to be distributed throughout the different counties in such manner as the Legislature may direct.”

It is asserted in a note, at the bottom of page 209, that the oral testimony given in the house, when the articles of impeachment were brought forward against Mr. Nicholson, was not committed to writing; part of this testimony appearing in pages 185 and 188, the Editor thinks it proper to state, how that part of it had been preserved, altho’ unknown to the managers:—He was employed by the proprietor of the Mail, a daily paper then published in the city, to collect intelligence, and for that purpose had been permitted, as many others had been before and since, to sit in a convenient place inside the bar of the House of Representatives, where he collected the testimony alluded to in Sept. 1793. About the same time he entertained some notions of publishing the following trial, in which he was encouraged by a number of respectable subscribers. The managers, in their letter to Mr. Nicholson, must mean, what really was the case, that “the testimony was not committed to writing or preserved” BY ORDER OF THE HOUSE.

Counsel engaged in Mr. HOPKINSON’S Trial.

1. JAMES SMITH, Esq. a member of the House of Assembly, and one of the Managers.
And

2. WILLIAM BRADFORD, Esq. Attorney-General.

For commonwealth.

1. JAMES WILSON, Esq.

And

2. JARED INGERSOLL, Esq.

Mr. Hopkinson.
Counsel

Counsel engaged in Mr. NICHOLSON's Trial.

- 1 BENJAMIN R. MORGAN, a
Member of the House of Re-
presentatives, and one of the
Managers.
- 2 WILLIAM RAWLE, Attorney-
General of the U. S. for the
state or district of Pennsylvania.
- 3 SAMUEL DEXTER, junior, a
representative in Congress from
Massachusetts.
- 4 ALEXANDER WILCOCKS, Re-
corder of the city of Philadel-
phia. And
- 5 JARED INGERSOLL, Attorney-
General of Pennsylvania.
Esqrs.

For the commonwealth.

- 1 EDWARD TILGHMAN,
- 2 JAMES GIBSON,
- 3 N. C. HIGGINSON,
- 4 WILLIAM BRADFORD, Attor-
ney-General of the U. S. And
- 5 WILLIAM LEWIS, Esqrs.

For Mr. Nicholson,

AN
ACCOUNT
OF THE
IMPEACHMENT
AND
TRIAL
OF THE LATE

FRANCIS HOPKINSON, Esquire,

JUDGE OF THE COURT OF ADMIRALTY FOR THE COMMON-
WEALTH OF PENNSYLVANIA.

PHILADELPHIA:

PRINTED BY FRANCIS BAILEY, AT YORICK'S HEAD,
N^o. 116, HIGH-STREET.

M,DCC,XCIV.



The NAMES of the SUBSCRIBERS.

M. C.=Member of Congress.—M. A.=Member of Assembly.—
M. P. S.=Member of the Senate of Pennsylvania.—H. R. U. S.
=House Representatives United States.

A.

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Y.

James Young,
 John Young.



A N

A C C O U N T

OF THE

IMPEACHMENT AND TRIAL, &c.

On WEDNESDAY the 22d of November, A. D. 1780, and in the 4th year of the Independence of the UNITED STATES, it appears from the minutes of the HOUSE OF ASSEMBLY of the commonwealth of Pennsylvania, That a Paper was presented to the Speaker, entitled, *A general Sketch of charges to be exhibited against FRANCIS HOPKINSON, Esquire, Judge of Admiralty; and a variety of depositions and other papers, exhibited as proofs to support the said charges; which were by order read, and laid on the table for consideration: and are as follow, being copies from originals.*

CHARGE I.

THAT having a power by law to appoint an agent for unrepresented shares belonging to absent seamen, and others, he offered and proposed to appoint Mr. *Blair M'Clenachan*, agent for a number of such shares belonging to seamen, who had sailed on board the privateer *Holker*, upon the condition, that he the said *Blair M'Clenachan* would make a present of a suit of cloaths; and, this condition not being complied with, he appointed others in his stead. (a)

2. Receiving presents from persons interested in the condemnation of prizes, previous to their condemnation;
tion;

(a) For proof see papers No. 2 & 3, and evidence to be summoned. Declared to be supported by the evidence.

tion; particularly a cask of wine from on board the prize brigantine *Gloucester*, presented to him by the captors before any condemnation, sale or distribution. (*b*)

3. Conniving at, and encouraging the sale of prizes before condemnation, contrary to law, and maliciously charging the Marshal with the crime of such conduct before the honourable the Supreme Executive Council; in the instance of the prize ship *Charlotte*. (*c*)

4. Issuing a writ of sale, of the cargo of a prize, declaring in the same writ that it was testified to him, that the same cargo was in danger of waste, spoil, and damage, when in fact and in truth no such testimony or return was ever given, or made to him;—in the instance of the cargo of the prize ship *Albion*. (*d*.)

N. B. In corroboration of the charges, several witnesses may be produced, who will not appear without being called for, by authority.

 For documents see page 8 to 21.

MONDAY, the 27th November.

THE paper entitled, A general sketch of charges to be exhibited against *Francis Hopkinson*, Esq. Judge of the Admiralty; received the 22d instant, and the several depositions, &c. accompanying the same, were read the second time, and referred to a committee of three: the gentlemen appointed were Mr. *Campbell*, Mr. *J. Smith*, and Mr. *Galbraith*, who are directed to request a conference with the Supreme Executive Council thereon.

THURSDAY,

(*b*) See papers No. 4, 5, 6, 7, 8 & (*Z*.)

N. B. The date of (*Z*) compared with those of No. 4 & 5, will shew that the wine was delivered before condemnation.

Not supported.

(*c*) Evidences to be summoned in support of this charge; and see paper (*A*) 3d article thereof.

Not supported.

(*d*.) See papers 9, 10, 11, 12.

Supported.

THURSDAY, *November 30.*

A LETTER from the Honorable *Francis Hopkinson*, Esq. Judge of the Court of Admiralty of this State, was read, requesting to be furnished with a copy of the charges exhibited against him on the 22d instant: Ordered that the clerk furnish Mr. *Hopkinson* with a copy of the charges aforesaid.

Mr. *Hopkinson* received the following letter that evening.—

“SIR,

“YOUR letter of this day I laid before the Assembly, and the Clerk was ordered immediately to furnish you with copies of all the papers relating to the subject you mentioned. I have the honor to be, with sentiments of respect and esteem,

Sir,

Your most obedient,

Humble servant,

FREDERICK A. MUHLENBERG.”

Honorable FRANCIS HOPKINSON, Esq.

Thursday Evening,

30th November, 1780.

FRIDAY, *December 1.*

A MEMORIAL from *Francis Hopkinson*, Esq. Judge of the Admiralty of this state, was read, stating, that as certain charges have been exhibited against him for misconduct in his office, he therefore prays that he may not be suffered to lie long under censure, but that a hearing or a trial in the manner the House may judge most eligible, may be directed as soon as possible.

Ordered,

Ordered, That it be referred to the committee appointed the 27th ult. to take into consideration the charges exhibited against him, &c.

The committee appointed to confer with the Supreme Executive Council on the charges exhibited against *Francis Hopkinson*, Esq. Judge of the court of Admiralty of this state, reported their performance of that service, &c.

Whereupon,

Ordered, That the House will resolve itself into a committee of the whole House, on Monday next, at four o'clock in the afternoon, to take into consideration the charges aforesaid.

Ordered, That the parties be directed to attend at the time aforesaid, in the Assembly room, with their respective evidences, when they will be heard on the charges aforesaid.

MONDAY, *December 4.*

ON motion,

Resolved, That the House will to-morrow re-consider the order of Friday last, assigning this afternoon for the consideration of the charges against *Francis Hopkinson*, Esq. Judge of the Admiralty, &c.

TUESDAY, *December 5.*

UPON a re-consideration of the order of Friday last, relative to the consideration of certain charges exhibited against *Francis Hopkinson*, Esq. Judge of the Court of Admiralty of this State, for mal-administration in his office, it was,

Resolved,

Resolved, That the witnesses in support of the charges aforesaid, be heard before the House to-morrow morning at eleven o'clock, the order aforesaid to the contrary notwithstanding.

Ordered, That the Clerk give notice to the witnesses to attend the House at the time, and for the purpose above directed.

Same day Mr. *Hopkinson* received the following letter.—

“ S I R,

“ I BEG leave to inform you that the General Assembly have re-considered their order of Friday last, and determined to hear the evidences only in support of the charges exhibited against you. Eleven o'clock to-morrow morning is the time appointed, when your presence will probably be necessary.

I am, Sir,

Your humble servant,

SAMUEL STERETT.”

FRANCIS HOPKINSON, Esq.

WEDNESDAY, *December 6.*

THE order of the day was called for and read.

The House agreeably thereto, proceeded to hear the evidence in support of certain charges exhibited against *Francis Hopkinson*, Esq. Judge of the Court of Admiralty of this State, for mal-administration in his office.

On motion,

Ordered, That the doors be shut during the examination of witnesses on the charges aforesaid.

Mr. *Hopkinson* appearing in the House, acknowledged the papers marked A, and No. 12, to be his hand-writing: They proceeded to hear the witnesses and to read the depositions accordingly.

The

The Judge of Admiralty's Memorial against the Marshal. Read in Assembly 22d November, 1780.

Marked (A.)

To His Excellency the President and Honorable the Executive Council for the State of Pennsylvania.—

The Memorial of Francis Hopkinson, Judge in the Court of Admiralty for the State of Pennsylvania,

Humbly Sheweth,

THAT from a sense of duty to the public and regard to the station he has the honor to fill, he finds himself under a necessity of preferring a complaint to your honors against the conduct of the Marshal of the said Court.

He founds his complaint on the following charges, viz.

1. Neglect of duty, in that the said Marshal hath made no returns of the writs issued by the Court for these eighteen months past (two instances only excepted) and hath made no returns whatever of accounts—sales; as by law and custom he ought to do.

2. For contempt of the Court, in not giving his attendance at the sittings thereof, as his duty requires.

3. In presuming to sell vessels and property before condemnation, not having the authority of the Court, or consent of the Judge for so doing.

4. In refusing to obey a writ of the Court.

5. In not exhibiting to the Judge, although thereto required, the bills of charges he brings against prizes, as by law he ought to do; in order that the Judge may examine, and if occasion requires, tax the same for the avoiding injustice and oppression.

As these seem to be breaches of duty in very important instances, your memorialist prays that the said Marshal may be removed from his office, and another appointed in his place.

FRANCIS HOPKINSON.

Philadelphia, October 30, 1780.

(L.S.) *Port of Philadelphia,* }
Pennsylvania, ss. }

No. 9.

Francis Hopkinson, *Esq. Judge of the Court of Admiralty of the State of Pennsylvania,* to Matthew Clarkson, *Esq. Marshal of the said State, Greeting.*

WHEREAS it is testified unto me that the cargo on board the ship or vessel called the *Albion*, lately sent into this port, and libelled against as prize, by *Samuel Walker, qui tam*, &c. is in great danger of waste, spoil and damage. These, therefore, are to authorise and command you forthwith to sell at public vendue, all and singular the goods, wares and merchandize, laden and found on board the said ship at the time of her capture; and you are to detain and keep in your safe custody the monies arising from the said sales, ready to abide the further order of this court—and how you shall have executed this writ, make return to me at a Court of Admiralty to be held at my Chambers in *Philadelphia*, the twenty-first day of August, instant, together with this writ. Given under my hand, and the seal of the said Court, the seventh day of August, Anno Domini, 1780.

FRANCIS HOPKINSON.

To Matthew Clarkson, *Esq. Marshall, &c.*

“SIR,

No. 12.

“SOME doubts having arisen as to the propriety of suffering prize-goods to be sold by public vendue, unless the same shall on inspection be found in a perishing condition, I have directed *William Heysham* and *William Budden* to examine the situation of the cargo on board the prize-ship *Albion*, which cargo you have advertised for sale this afternoon.

“Messrs. *Heysham* and *Budden* have made a report to me, that they have carefully examined the said cargo, being Liverpool salt, and that they find the same in good order and well conditioned, and in no immediate danger of suffering by waste or otherwise.

B

“You

"You are therefore hereby directed not to proceed in a public sale of the said salt, but reserve the same to be disposed of, as the Court shall order after trial of the said ship *Albion* and her cargo.

I am, sir, &c.

Aug. 11, 1780.

FRANCIS HOPKINSON."

The paper marked Z, is an order from the Judge to sell and distribute the brig *Gloucester* and cargo, dated the 30th August, 1780, under his hand and seal, and directed to the Marshal. Inclosed is a bill of costs in the case of the *Recovery*, amounting to £.34:8:0 specie, multiplied by 40, as the rate of depreciation for paper-money at that period. Omitted here as immaterial.

Philadelphia, 9th August, 1780.

"DEAR SIR,

No. 11.

"THE Marshal applies to me, in consequence of a letter from you, and some conversation since, respecting the sale of the salt on board of the *Albion*.

"The law is clear in it's directions; and I have advised him to represent to the Judge the indispensable necessity of having it returned upon oath that the *cargo is really perishable or damaged, so that it will not keep without further injury*; previous to any sale. This step I presume will be taken, and if the facts will warrant a sale, it will go on; otherwise not.

I have the honor to be,

Your Excellency's most obedient,
Humble servant,

JONAT. D. SERGEANT."

His Excellency President REED.

"SIR,

No. 10.

"I OBSERVE an advertisement to sell by auction in your name.

"That others should make a mistake of this nature, would not be much wondered at; but that an officer
of

of the state should advertise a violation of it's laws, must have a very odd appearance. You will do well to re-consider the Acts of Assembly, and not proceed unless you are very clear in so doing.

I am in haste.

But with due esteem,
Sir, your obedient,
Humble servant,

JOS. REED."

Market-street,

August 9, 1780.

MATTHEW CLARKSON, *Esq. Marshal, &c.*

(Copy.)

SAMUEL STERETT, *Clerk of the
General Assembly.*

No. 2.

Mr. *M. Clarkson*, sworn in support of the first charge, faith,

That some time in the month of May last, Mr. *H.* brought Mr. *M'C.* to his house, to talk over certain disputes that happened between him the said *M'C.* and the officers of the Court of Admiralty. That we conferred fully on the subject—and several explanations took place, concerning matters misconceived between the said *B. M'C.* and Dep. The event was a reconciliation that appeared cordial—the Judge testified his assent to said reconciliation, having been before offended with Mr. *M'Clenachan.*

Mr. *M'C.* went away, and the Judge remained. A conversation commenced between Dep. and Judge; Dep. mentioned that a number of shares were unrepresented, that the Judge by law might appoint agents for. That as Mr. *M'C.* had made considerable advances to those people whose shares were unrepresented. Dep. said it would be an act of kindness to appoint *M'C.* such agent, as it would put it in his power to save the money advanced,—and thought it would be a good testimony of the aforesaid reconciliation being effected.

The

The Judge consented, and said he would appoint *M'C.* and gave me leave so to inform *M'C.* and added, that such appointments were lucrative to the receivers—and many had been done by him (the Judge) to owners of privateers; for which he had received no recompense. That Judge apprehended that on this occasion the profits to Mr. *M'C.* would be a sufficient reason for him the said *M'C.* to make him the Judge, a present of a suit of cloaths, and Judge desired Dep. would mention it to Mr. *M'C.* Dep. afterwards saw *M'C.* and informed him, that the Judge had agreed to appoint him agent as aforesaid. *M'C.* a few days after mentioned to Dep. that in consequence of the promise of the Judge, he had paid some of *the* said seamen, whose shares were unrepresented, more money. Dep. made no mention of the Judge's expectations of a suit of cloaths, considering it too delicate a matter.

Judge frequently asked deponent whether he said any thing about said cloaths. Dep. evaded the answer, by saying he had no convenient opportunity. Thus the matter rested for two weeks or three, when being at the Coffee-house, I met the Judge there; he informed me that the letters of agency were made out—but that Messrs. *Meade* and *Fitzsimons* were appointed instead of *M'C.* Dep. felt surprised at the information, and remonstrated with the Judge having desired me, and mentioned the promise he (the Judge) had made of appointing *M'C.*—and that Dep. said, he had informed *M'Clenachan* of his intended appointment.

Judge said he had a right to appoint whom he pleased—and the matter had now rested two or three weeks, and that he had never heard of the deponents applying for the suit of cloaths—and thought himself neglected. Dep. felt wounded at his (the Judge's) conduct, and told him (the J.) that he treated him ill, and left him.

A few days after, Judge came to Dep. house, and conversed on what had passed, and attempted to vindicate himself, and said that one thing he was most sorry for,
viz.

viz. the request to apply for the suit of cloaths, as by so doing he had put himself in his the Dep. power. Dep. told him that it depended on himself, that he was not disposed to do any injury to him. Dep. and Judge then parted.

Cross examined. Dep. rather thinks no person was present at the conversation about suit of cloaths.

Judge took the Dep. to one side on the conversation at the Coffee-house. Dep. never told M^cC. of the Judge's request. Dept. don't know that the Judge received any reward from *Meade* and *Fitzsimons*.

Dept. told his brother of the Judge's request same day and Mr. *Hazard*, and don't know that it is customary for the officers of the Court to receive presents, as he never received any himself.

Philadelphia, ff.

No. 3.

"*Gerardus Clarkson* maketh oath that he had seen the foregoing deposition, and that he, the deponent, was informed of the transaction therein mentioned, soon after it happened, by his brother *Matthew Clarkson*, that on conversing with the Judge on the subject, a few days after, he, Judge *Hopkinson*, informed the deponent that he, the Judge, had promised the Marshal that *Blair M^cClenachan* should have the agency; but that as he had seen *Blair M^cClenachan* frequently since, and he Mr. *M^cClenachan* had taken no notice of him, he saw no reason why he Mr. *M^cClenachan*, should have his favors, and therefore gave them to somebody else.

GERARDUS CLARKSON."

Sworn 16th November, 1780, before

WILLIAM RUSH.

"SIR,

No. 4.

"THERE being an immediate call for a quarter cask of the wine in the brigantine *Gloucester* for particular use, should esteem it a favor if an order would be sent

sent by the bearer to Capt. *M^cPherſon* for the delivery of one caſk; for *Blair M^cClenachan*, Agent for the *Holker*,

CHARLES MILLER, *Agent for the Fair American and crew.*

To MATTHEW CLARKSON, *Eſq. Maſſhal.*

Philadelphia, Auguſt 12th, 1780.

No. 5.

Auguſt 15th, 1780. I do hereby acknowledge to have received the within mentioned quartercaſk of wine, Mr. *Clarkſon* will pleaſe to charge the ſame to the privateers *Fair American* and *Holker* according to their reſpective ſhares, it being ſent as a preſent to the honorable *Francis Hopkiſon*, *Eſq.* Judge of the Admiralty by conſent of the agents for ſaid privateers.

CHARLES MILLER.

Philadelphia, }
Pennſylvania, } *ſſ.*

William Watkin maketh oath, that he, the deponent, was firſt prize maſter on board the *Fair American* in her late cruize, that on her taking the prize brig *Glouceſter* ſome time in Auguſt, he the deponent was put on board of her as prize maſter, and brought her up to *Philadelphia* ſoon after; that Mr. *Charles Miller*, one of the owners and an agent for the concerned in the *Fair American*, applied to the deponent at the upper part of *Hamilton's* wharf, and told him that he would be glad he the deponent could get at a caſk of wine of the firſt quality; that they wanted it for a particular purpoſe, for the Judge of the Admiralty; that Mr. *Miller* aſked Dept. if he could get at it; Depont. ſaid he doubted it becauſe Capt. *M^cPherſon* was put on board by the Maſſhal, but he would try: that Mr. *Miller* ſaid the caſk was for the Judge of the Admiralty; for nothing could be done without it to procure diſpatch; that Mr. *Miller* deſired Dept. to ſpeak to Capt. *M^cPherſon*, and ſee if he would not let it go without an order from the Maſſhal.

shal. Dept. answered, that he (Mr. *Miller*) had better try himself; Mr. *Miller* said he thought Capt. *M^cPher-son* would not do it for him, but would be more likely to do it for the deponent: That Capt. *M^cPher-son* refused to do it without the Marshal's order, though the deponent by Mr. *Miller's* order, told Capt. *M^cPher-son* that he Mr. *Miller* and Mr. *Blair M^cClenachan*, would be accountable for it. That hereupon Dept. acquainted Mr. *Miller* of Capt. *M^cPher-son's* refusal, and he (Mr. *Miller*) wrote a note to the Marshal, and that he believes a note now shewn him, and signed *Charles Miller*, agent for the *Fair American* and crew, to be the same; that an order came soon after from the Marshal, and thereupon a cask of wine of the first quality was taken from on board the brig *Gloucester* and delivered to a porter, with orders to carry it to the Judge in Third-street.

WILLIAM WATKIN.

Sworn 16th November, 1780, before me

WILLIAM RUSH.

Philadelphia, ff.

No. 7.

Capt. *Matthew Henderson* maketh oath that he was on *Hamilton's* wharf soon after the before mentioned cask of wine was gone as he was told; that Dept. asked Capt. *William Watkin* if he had broke bulk; that Capt. *Watkin* appeared angry, and said no; only a quarter cask that we have taken and sent to the Judge of the Admiralty, to expedite business, and prove that nothing could be done without bribery; it was just like England.

MATTH. HENDERSON.

Sworn 16th November, 1780, before me

WILLIAM RUSH.

Philadelphia, ff.

No. 8.

James Clarke maketh oath that he (the Dept.) was employed by Capt. *Watkin* to assist in the delivery of the cargo of the prize brig *Gloucester*; that he knows
of

of the sending the quarter cask of wine and saw it go ; that he understood from Mr. *Charles Miller*, that it was going as a compliment to the Judge of the Admiralty ; that the reason he gave was that they had a perishing cargo on board, and wanted liberty from the Judge to discharge before the time limited by law.

JAMES CLARKE.

Sworn 16th November, 1780, before me

WILLIAM RUSH.

William Lewis being duly affirmed, saith, That several months before the removal of the Marshal of the Admiralty of *Pennsylvania* from his office, Mr. *Hopkinson*, Judge of the said court mentioned to this affirmant, some disputes which had arisen between them, and that there was one matter which perhaps the Marshal might attempt to take advantage of, which was, that he had demanded a suit of cloaths for the appointment of Mr. *Blair M'Clenachan*, agent for the unrepresented shares of seamen—that the truth of the matter was, he had proposed or intended appointing him agent ; but as it was a very lucrative office, which would put large sums of money into his pocket, and as he the Judge was empowered by law to appoint whom he pleased, and as the appointment was discretionary with him, he did not see why he should give Mr. *M'Clenachan* such an appointment without some compliment in return ; that he thought a suit of cloaths but reasonable, and had signified that he would appoint him, if he had a suit of cloaths, that some time elapsed without this being attended to, or any assurance given of the said suit of cloaths, and therefore he had appointed others.

Mr. *Sergeant* sworn,—doth depose and say, that he knows the Judge charged the Marshal before Council for selling prizes before condemnation, and without order, that he (Dep.) had formerly frequently applied to have orders for the sale of vessels before condemnation and procured them—but under the present law, the
Judge

Judge refused to give any orders but referred him to the Marshal, implying that he (Judge) would not take any notice thereof if made. That he (Dep.) did not think that such application was wicked or unjust.

Acknowledges the paper No. 11 to be his, and understands the sale of the *Albion's* cargo was stopped on that account.

B. M^cClenachan being sworn in support of the first charge, deposeth and saith, that he understood from Mr. *M. C.* that he would be appointed an Agent for certain unrepresented shares, but that he never solicited the appointment and never heard any thing respecting a present of a suit of cloaths. That he had advanced considerable sums of money to persons owning unrepresented shares, and settled the accounts with *M.* and *F.* the agents appointed by the Judge.

In support of the 2d.

That on the proposal of Mr. *Miller* he consented to make a present of a cask of wine to the Judge aforesaid.

That the order for delivering the cask must have come from *M. C.* Judge never applied for it. That he did not intend the said wine as a bribe, or to influence the Judge in an undue manner. That the Judge ever conducted himself in an upright manner to the best of Dep. knowledge—always found Judge in his duty, and thought rather too severe—signed a paper requesting the indulgence of the sale of the *Charlotte*—no present, nor bribe given for the indulgence.

In support of the 3d.

That he with others petitioned as he thinks for the sale of the *Charlotte* before condemnation, being suited for a privateer.

Andrew Robeson sworn saith, that he is Register of the Court of Admiralty. That about the time that the Marshal made return that certain shares of seamen belonging

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longing to the privateer *Holker* were unrepresented, the Judge mentioned his design to appoint such agents.

The Judge then informed the Dep. in the course of conversation, that the Marshal shortly after applied to be agent—To which the Judge objected, as he (M.) was an officer of the Court, &c.—Marshal urged it on the score of friendship, &c. but the Judge still rejected his the M's application. The matter laid so some time, when Ma. told Judge that it would answer as well to appoint M'C. such agent. Judge consented to appoint M'C. agent. That he the said Judge, afterwards seeing M'C. and he M'C. saying nothing on the subject, the Judge thought for several reasons, it would be best to appoint some one else such agent—for if such things were not worth asking for, they were not receiving.

On question.

Dept. in course of conversation heard the Judge say that *Gover. Morris* had declared that his (G. M.) father used to receive presents, and refused to proceed against Act of Parliament without; this was introduced as mere matter of chit-chat. After above conversation some time, Judge informed Dep. that M. and F. were appointed the agents aforesaid, and desired him to prepare bonds accordingly.

Dep. heard no more till the M's hearing before Council, when Marshal mentioned the substance of the first charge. Judge told Dep. on conversing with him on the subject, that M. agreed with him that there would be no impropriety in receiving a suit of cloaths for the exercise of a discretionary, and not a judicial power, &c.—But that afterwards the Judge told the M. that M'C's deportment and situation was such that we would not appoint him the agent aforesaid. And he the Judge directed the M. not to mention the suit of cloaths, as he now viewed it rather in a different light. The Judge told him that M'C. and *Miller* had in his absence had sent him (the Judge) a cask of wine, and never knew any thing of it until Mrs. *Hopkinson* had informed him.

2d charge.

2d charge.

M. told Dep. that Judge had received a present as stated in 2d charge—that Judge knew nothing of it till delivery, and then imagined it was a mistake. *Gloucester's* trial was tried after 14 days notice, the cargo was wine, he shewed from his minutes that the practice in this instance is not unusual, &c.

3d charge.

That in some cases of armed vessels, orders issued for appraisement, &c. that in the case of the *Charlotte*, the Marshal advertised for sale and sold previous to condemnation, but on the day the trial was to have been, which was deferred by the neglect of the owners to procure proper testimony, the Judge attended to forbid the sale, but too late.

She was condemned 27th October, and sold 2d September before.

4th charge.

In the case of the *Albion*, a writ of ap—issued previous to the order of sale, under a persuasion that the cargo was perishable in its nature and much wanted. But the said order for sale was contradicted on the report of certain inspectors that it was not in danger, &c.

Thinks the Judge to *be* a person of great integrity.

Miles Filborne being duly affirmed, said, that he was one of the inspectors of the cargo of the *Charlotte*; and when they made their report, that the cargo was in a perishing condition, some of the inspectors observed that it was a pity the ship should be detained with forms, as she would be a good privateer, &c.—The Judge replied that she was so clearly a prize, that some of the forms might be dispensed with to expedite her condemnation and sale.

Dep. was one of the inspectors of the *Albion's* cargo.

William Heysham being sworn, deposeth and saith, that he was one of three to inspect the cargo of the ship *Charlotte*—they (the inspectors) waited on the Judge to report,

report, one of them observed to the Judge that the ship was a good fast sailing vessel, and that several of the owners had expressed their desire that she might be condemned as soon as possible, and that they intended to buy and fit her out as a privateer.

The Judge answered it was a pity that such a ship *should* be delayed. It would be serving the public to indulge them the owners, and that she should be condemned as soon as possible—but it could not be done without public advertisement, and this is Saturday and it cannot be done till Tuesday, but I will grant every indulgence in my power, where the matter is clear.

Dep. was one of the inspectors of the cargo of the *Albion*, and they reported it well conditioned and in good order.

William Budden being sworn, faith, that he was one of three, that inspected the cargo of the *Chorlotte* and reported it in a perishing condition—that some of the inspectors observed that the ship was a fast sailing vessel, and that the Judge said the condemnation and sale should be expedited as soon as possible, but it could not be done without public notice, &c.

Dep. was one of the inspectors of the *Albion's* cargo, and reported it in good order.

Mr. *Charles Miller* being sworn, acknowledges the papers No. 4 and 5, to be his hand writing—Deponent—acknowledges to have sent the cask of wine mentioned in the second charge, as a present to the Judge on account of former friendship, and not for the performance of any special purpose. Dep. never mentioned to any person his design of sending the above present, consequently the Judge could not know it, until the delivery.

 On the files of the General Assembly there are two sets of depositions, given in by the witnesses; the second copies have been omitted by the editor as immaterial,

terial, except where they throw additional light on the subject—therefore the following is given—

Charles Miller being duly sworn, deposeth and saith, that he acknowledges the papers No. 4 and 5, to be his hand writing, he proposed making a present to the Judge of a quarter cask of wine, with the consent of *Mr. M^cClenachan*. *Mr. Hopkinson* knew nothing of the wine until it was sent, it was a present from him, as *Mr. M^cClenachan* had sent a pipe to *G. Washington*, he never told his intention of sending the wine to any person.

Progress being made in the business.

It was, on motion,

Ordered, That the further hearing of evidence be postponed till the afternoon.

Same Day. P. M.

The House met; and resumed the hearing of evidence in support of certain charges exhibited against the Judge of the Court of Admiralty, for mal-administration in his office, &c.

Resolved, That the 1st and 4th of the said charges against the said Judge appear to be supported by legal evidence. (The 4th to be called the 2d.)

Resolved, That the two following charges exhibited in like manner against the Judge aforesaid, are not supported by the evidence before the House, viz.

That he, the said Judge, received presents from persons interested in the condemnation of prizes, previous to their condemnation; particularly a cask of wine from on board the prize brigantine *Gloucester*, presented to him by the captors before any condemnation, sale or distribution.

And, that he, the said Judge, connived at, and encouraged the sale of prizes before condemnation, contrary

trary to law, and maliciously charged the Marshal with the crime of such conduct before the honorable Supreme Executive Council; in the instance of the prize ship *Charlotte*.

On motion,

Ordered, That the charges, which appear to be supported by legal evidence, as above declared, be referred to a committee of three: The gentlemen appointed were Mr. *J. Smith*, Mr. *Galbraith*, and Mr. *Montgomery*.

FRIDAY, *December 8.*

THE committee to whom certain charges against *Francis Hopkinson*, Esq. Judge of the Court of Admiralty of this state, for mal-administration in his office, were referred on Wednesday last, made their report, which was, by order, read.

On motion and by special order, it was read a second time; whereupon,

The House resumed the consideration of the charges aforesaid, and came to the following resolutions, viz.

Resolved, That *Francis Hopkinson*, Esq. Judge of the Court of Admiralty of this state, be impeached for the crime and misdemeanor expressed and contained in the first charge exhibited against him; and declared by a resolution of this House of the 6th instant, to be supported by legal evidence.

The yeas and nays being required by Mr. *Boyd*, and Mr. *P. Anderson*, are as follow, viz.

Y E A S.

- 1 *Robert Morris*,
- 2 *Sharp Delany*,
- 3 *John Steinmetz*,
- 4 *George Gray*,
- 5 *Samuel Penrose*,

Y E A S.

- 6 *Henry Hill*,
- 7 *Matthew Holdgate*,
- 8 *Benjamin Fell*,
- 9 *Joseph Savage*,
- 10 *William Scott*,

Y E A S.

YEAS.

- 11 *James Morgan,*
- 12 *David Thomas,*
- 13 *Patrick Anderson,*
- 14 *Evan Evans,*
- 15 *John Whitehill,*
- 16 *Christopher Kucher,*
- 17 *James Anderson,*
- 18 *Philip Greenawalt,*
- 19 *Adam Reigart,*
- 20 *James Cowden,*
- 21 *Alexander Lowrey,*
- 22 *Matthias Slough,*
- 23 *James Dixon,*
- 24 *Moses M'Clean,*
- 25 *Thomas Lilly,*

NAYS.

- 1 *George Campbell,*
- 2 *Joseph M'Clean,*
- 3 *George Smith,*
- 4 *Gerardus Wynkoop,*
- 5 *William Harris,*
- 6 *James Boyd,*
- 7 *John Culbertson,*
- 8 *Jacob Cook,*
- 9 *Robert Galbraith,*

YEAS.

- 26 *Stephen Duncan,*
- 27 *William Brown,*
- 28 *Jonathan Hoge,*
- 29 *John Andrews,*
- 30 *John Harris,*
- 31 *John Allison,*
- 32 *George Ege,*
- 33 *John Patton,*
- 34 *Baltzer Gebr,*
- 35 *Mark Burd,*
- 36 *Thomas Mifflin,*
- 37 *William M'Farren,*
- 38 *Robert Latimer,*
- 39 *John Burd.*

NAYS.

- 10 *James Smith,*
- 11 *William Mitchell,*
- 12 *James Ramsey,*
- 13 *Peter Rhoads,*
- 14 *William Montgomery,*
- 15 *David M'Kinney,*
- 16 *John Kelley,*
- 17 *Joseph Powell,*
- 18 *James Jacks.*

Resolved, That the said *Francis Hopkinson* be also impeached for the crime and misdemeanor expressed and contained in the second charge declared as above to be supported by legal evidence.

The yeas and nays being required, stand as follows, viz.

YEAS.

- 1 *Robert Morris,*
- 2 *Sharp Delany,*
- 3 *John Steinmetz,*
- 4 *George Gray,*

YEAS.

- 5 *George Campbell,*
- 6 *Joseph M'Clean,*
- 7 *Samuel Penrose,*
- 8 *Henry Hill,*

YEAS.

Y E A S.

- 9 *John Culbertson,*
- 10 *James Boyd,*
- 11 *Joseph Savage,*
- 12 *William Scott,*
- 13 *James Morgan,*
- 14 *David Thomas,*
- 15 *Patrick Anderson,*
- 16 *Evan Evans,*
- 17 *John Whitehill,*
- 18 *Christopher Kucher,*
- 19 *James Anderson,*
- 20 *Philip Greenawalt,*
- 21 *Adam Reigart,*
- 22 *James Cowden,*
- 23 *Alexander Lowrey,*
- 24 *Matthias Slough,*
- 25 *James Jacks,*
- 26 *James Dixon,*
- 27 *Moses M'Clean,*
- 28 *Robert Galbraith,*

Y E A S.

- 29 *James Smith,*
- 30 *William Mitchell,*
- 31 *James Ramsay,*
- 32 *Thomas Lilly,*
- 33 *Stephen Duncan,*
- 34 *Jonathan Hoge,*
- 35 *John Andrews,*
- 36 *John Harris,*
- 37 *John Allison,*
- 38 *George Ege,*
- 39 *John Patton,*
- 40 *Baltzer Gebr,*
- 41 *Mark Bird,*
- 42 *William M'Farren,*
- 43 *Robert Latimer,*
- 44 *Peter Rhoads,*
- 45 *David M'Kinney,*
- 46 *John Kelly,*
- 47 *John Burd.*

N A Y S.

- 1 *Matthew Holdgate,*
- 2 *George Smith,*
- 3 *Benjamin Fell,*
- 4 *Gerardus Wynkoop,*
- 5 *William Harris,*

N A Y S.

- 6 *Jacob Cook,*
- 7 *William Brown,*
- 8 *Thomas Mifflin,*
- 9 *William Montgomery,*
- 10 *Joseph Powell.*

Ordered, That Mr. Campbell, Mr. J. Smith, and Mr. Galbraith, prepare and report to the House, proper articles of impeachment to be exhibited against the said Francis Hopkinson, Esq. conformable to the above resolutions.

SATURDAY, December 9.

THE committee appointed yesterday to prepare articles of impeachment against the Judge of the Court of Admiralty,

Admiralty, for mal-administration in his office, made their report, which was read, and ordered to lie on the table for consideration.

TUESDAY, *December 12.*

THE articles of impeachment against *Francis Hopkinson*, Esq. Judge of the Court of Admiralty of this State, prepared and reported by a committee of the House, were read the second time, and, on consideration, agreed to, as follows, viz.

ARTICLES of IMPEACHMENT *for certain crimes and misdemeanors, against FRANCIS HOPKINSON, Esq. Judge of the Court of Admiralty of the commonwealth of Pennsylvania, by the Representatives of the Freemen of the said commonwealth, in GENERAL ASSEMBLY met, in their own name, and in the name of all the Freemen of the said commonwealth; exhibited to the Supreme Executive Council.*

First. That having a power by law to appoint an agent for unrepresented shares of prizes, belonging to absent seamen and others, he, the said *Francis Hopkinson*, in a conversation with the late Marshal, *Matthew Clarkson*, offered and proposed to appoint *Blair M'Clenachan*, agent for a number of such shares, belonging to seamen who had sailed on board the privateer *Holker*, upon condition, that he, the said *Blair M'Clenachan*, would make a present of a suit of cloaths; and, this condition not being complied with, he appointed others in his stead.

Secondly. That he, the said *Francis Hopkinson*, issued a writ for the sale of the cargo of a prize, declaring in the same writ, that it was testified to him, that the same cargo was in great danger of waste, spoil and damage, when in fact and in truth, no such testimony or return was ever given or made to him, in the instance of the cargo of the prize ship *Albion*.

And the said Representatives of the Freemen of the
D common-

commonwealth of *Pennsylvania*, in General Assembly met, do demand, that the said *Francis Hopkinson*, Esq. Judge of the Court of Admiralty, may be put to answer all and every the premises, and that such proceedings, examinations, trials and judgments may be upon him had and used, as is agreeable to law and justice, and the directions of the Constitution of this commonwealth; and the said Representatives of the Freemen aforesaid, are ready to offer proofs of the premises, when and where the Supreme Executive Council of this state of *Pennsylvania* shall appoint.

Ordered, That the foregoing articles of impeachment be engrossed and signed by the Speaker; and that Mr. *Campbell*, Mr. *J. Smith*, and Mr. *Galbraith*, be a committee to carry up the same to the Supreme Executive Council, and manage the trial to be had thereon in behalf of the state.

Ordered, That the Attorney-General be directed to give his attendance at the trial aforesaid, and assist thereat on behalf of the commonwealth.

Same Day, P. M.

The articles of impeachment against *Francis Hopkinson*, Esq. were brought in engrossed, and being signed by Speaker, were carried up to the Supreme Executive Council by the committee appointed for that purpose.

MONDAY, *December 18*.

A MEMORIAL and representation from *Jonathan Dickinson Sergeant*, was received and read.

On motion and by special order, it was read the second time.

Ordered, That it be inserted in the minutes.

The same is as follows, viz.

To

To the Honorable the REPRESENTATIVES of the FREEMEN
of the commonwealth of Pennsylvania, in GENERAL
ASSEMBLY met,

The memorial and representation of JONATHAN DIC-
KINSON SERGEANT,

Humbly Sheweth,

THAT finding an enquiry instituted into the conduct of the honorable *Francis Hopkinson*, Esq. Judge of the Court of Admiralty, and your memorialist being of opinion, that the said Judge has been guilty of receiving and exacting fees beyond what are warranted by law, from the suitors in his court, he begs leave to represent the same with all humility to this honorable House. That the Act of Assembly of the twenty-seventh day of November, one thousand seven hundred and seventy-nine, provides "That the fees of the Judge of Admiralty, including his fee for a final decree, in the case of a ship or vessel under the burthen of one hundred tons, shall be twenty-five bushels of wheat, and in the case of a ship or vessel above the burthen of one hundred tons, shall be forty bushels of such wheat, payable however in money, as in the case of the officers aforementioned." That your memorialist believes it will appear, that by law no more than five hundred pounds are due to the Judge in the case of a vessel under one hundred tons, but that nevertheless more than double that sum are continually charged and received, as the Judge's fee in such cases. That your memorialist herewith transmits an authentic copy of a bill of costs, which has been some time since paid, as he is informed, and believes, in the case of the *Recovery*, a small prize taken by *Job Pray*, in the employ of *Andrew and Hugh Hodge*, which was of the burthen of only eighty tons, and which was libelled by your memorialist. That the charge of *thirteen hundred pounds* in this case has been complained of by your memorialist's clients, and he believes to be extortionate; yet the like charges will be found in a variety of other instances, if recourse be had

to

to the bills of costs on the files of the Register, or in the hands of the late Marshal. That your memorialist begs leave to instance particularly in the case of the *Fame*, which was also libelled by your memorialist, and lately condemned, being a small vessel owned by *Joseph Carson* and others, re-taken by the *Fair American* privateer. That if this honorable House should find upon enquiry, as your memorialist is induced to believe they will find, that the said Judge has been guilty of exacting more than his due, in these and other instances, he humbly hopes the said Judge will be called upon to answer for the same along with the other charges exhibited against him. And your memorialist will pray, &c.

JONATHAN D. SERGEANT.

The bill of costs alluded to in the above memorial, is as follows, viz.

<i>Job Pray, &c.</i>	}	Judge	-	-	£.1,300
v.		Advocate	-	-	256
<i>Brigantine Recovery.</i>		Register	-	-	2,150
		Marshall	-	-	450
					£.4,456

Robert Morris, claimant.

Libellant's part	-	-	£. 3256
Claimant	-	-	1200

£. 4,456

A true copy from the original,

MATTHEW CLARKSON.

Ordered, That the Clerk give notice to *Matthew Clarkson*, of the city of *Philadelphia*, merchant, to attend this House immediately to give evidence on the charge contained in the above memorial and representation, against *Francis Hopkinson*, Esq. Judge of the Court of Admiralty of this state, for mal-administration in his office.

The House were informed that Mr. *Clarkson*, who was directed to attend the House, to give testimony on the

the charge exhibited this morning against *Francis Hopkinson*, Esq. was confined to his chamber by sickness, and could not obey the order of the House.

Ordered, That Mr. *Steinmetz*, and Mr. *Penrose*, taking to their assistance a Justice of the Peace, be a committee to obtain the necessary information on the charge aforesaid from the said *Matthew Clarkson*.

The committee appointed this morning, to obtain the necessary information from *Matthew Clarkson*, respecting the charge exhibited against *Francis Hopkinson*, in the memorial of *Jonathan D. Sergeant*, reported the following deposition, indorsed on the bill of costs, alluded to in the said memorial, &c.

Philadelphia, ff.

Personally appeared *Matthew Clarkson*, before me, the subscriber, one of the Justices of the Peace, &c. and maketh oath, that the within writing is a true copy of the original bill of costs, in the Court of Admiralty, in the case of *Job Pray*, &c. v. brigantine *Recovery*, *Robert Morris*, claimant; that the deponent settled with *Francis Hopkinson*, Judge of Admiralty, agreeable to the said bill, and allowed and paid him in account the sum of *thirteen hundred pounds*, as his part of the said bill of costs.

MATTHEW CLARKSON.

Philadelphia, Decem. 18, 1780.

Sworn before me,

WM. RUSH.

TUESDAY, December 19.

THE House resumed the consideration of the memorial and representation of *Jonathan Dickinson Sergeant*, and the deposition reported yesterday by a committee of the House: Whereupon,

Resolved,

Resolved, That *Francis Hopkinson*, Esq. Judge of the Court of Admiralty of this state, be impeached on the charge expressed and contained in the said memorial and representation.

Ordered, That Mr. *Campbell*, Mr. *J. Smith*, and Mr. *Galbraith*, be a committee to prepare a proper article of impeachment on the said charge, to be sent to Council.

The committee appointed to prepare a proper article of impeachment against *Francis Hopkinson*, Esq. Judge of the Court of Admiralty of this state, on the charge expressed and contained in the memorial of *Jonathan D. Sergeant*, presented yesterday, reported the same, which was read the first time.

On motion, and by special order, it was read the second time, and being considered was agreed to, as follows, viz.

A further ARTICLE of IMPEACHMENT, for exacting and receiving illegal fees, against Francis Hopkinson, Esquire, Judge of the court of Admiralty of this state of PENNSYLVANIA, in addition to the former two exhibited to the Supreme Executive Council the 12th instant, by the Representatives of the FREEMEN of the commonwealth of PENNSYLVANIA, in General Assembly met.

WHEREAS by an Act of General Assembly of this commonwealth, passed the twenty-seventh of November, in the year of our Lord one thousand seven hundred and seventy-nine, it is enacted, "That the fees of the Judge of Admiralty, including his fee for a final decree, in the case of a ship or vessel under the burthen of one hundred tons, shall be twenty-five bushels of good merchantable wheat; and in the case of a ship or vessel above the burthen of one hundred tons, shall be forty bushels of such wheat, payable however in money, as in the case of other civil officers of this state." Nevertheless, he the said *Francis Hopkinson*, Esq. Judge of the Court of Admiralty, in contempt of the Act of Assembly

Assembly aforesaid, did exact and receive, as and for his fees, as Judge of the Court of Admiralty aforesaid, the sum of *thirteen hundred pounds* in the case of the brigantine *Recovery*, *Job Pray*, libellant, and *Robert Morris*, claimant, of the burthen of about eighty tons, being a larger and greater sum than by law he ought to have received.

And the said Representatives of the Freemen of the Commonwealth of *Pennsylvania*, in General Assembly met, do demand, that the said *Francis Hopkinson*, Esq. Judge of the Admiralty, may be put to answer to the above charge in like manner as to the former charges exhibited in the impeachment sent the 12th instant, they being in like manner ready to offer proofs of the premises, when and where the Supreme Executive Council of this state of *Pennsylvania* shall appoint.

Ordered, That the above article be engrossed.

WEDNESDAY, *December 20.*

THE additional article of impeachment against *Francis Hopkinson*, Esq. Judge of the Court of Admiralty of this state, as agreed to yesterday, was brought in engrossed, and being compared at the table, was signed by the Speaker by the direction of the House.

Ordered, That the same be carried to the Supreme Executive Council, by the committee appointed on the former articles of impeachment, who are hereby directed to manage the trial to be had thereon, taking to their assistance the Attorney-General of this state, as before ordered.

 The Editor will now give a view of this subject as managed before the Supreme Executive Council, from the time of its first introduction until the decree was pronounced. It is presumed that reasonable indulgence will be allowed for the unavoidable deficiencies which are

are obvious in the foregoing and following pages, because no regular narrative of the proceedings had been collected in proper season.

IN COUNCIL, TUESDAY, *December 12.*

Present, His Excellency JOSEPH REED, *President*, the honorable WILLIAM MOORE, *Vice-President*, Mr. LACEY, Mr. GARDNER, Mr. JAMES READ, Mr. POTTER, and Mr. PIPER.

Mr. *Smith* and Mr. *Galbraith* from the House of Assembly, laid before the Board, articles of impeachment against *Francis Hopkinson*, Esq. Judge of the Court of Admiralty, which being read ;

Ordered, That Saturday next at eleven in the forenoon be appointed to proceed thereupon.

That in the mean time, the Secretary do furnish the said *Francis Hopkinson*, Esq. with a copy of this order, and the said articles, that he may give in his written answer thereto before the said day.

This was made known to Mr. *H.* the same day.

MONDAY, *December 18.*

PRESENT as above.

Mr. *Hopkinson* put in the following answer to the aforesaid articles.

The answer of *Francis Hopkinson*, Judge of the Court of Admiralty of the commonwealth of *Pennsylvania*, to the articles of impeachment exhibited against him, by the Representatives of the Freemen of the said commonwealth, in General Assembly met, in their own name, and in the name of all the Freemen of the commonwealth aforesaid.

TO the first article the said *Francis Hopkinson* saith, that *Matthew Clarkson*, Esquire, late Marshal, made a return

return to him the said *Francis Hopkinson*, as Judge of the Court of Admiralty; of certain unrepresented shares in prizes taken by the privateer called the *Holker*, soon after which the said *Matthew Clarkson* came to him the said Judge, and desired he might be appointed agent for the said unrepresented shares (the said *Francis Hopkinson* then being in intimate friendship with the said *Matthew Clarkson*) but the said Judge cautiously declined giving him the said *Clarkson* the agency requested; observing to him that the offices of agent and marshal appeared to be incompatible, and requesting the said Marshal not to urge a compliance with his desire, as such an appointment would probably bring censure on both.

Nevertheless the said *Matthew Clarkson* continued to urge the appointment for two or three days, pleading the poverty of his office, declaring the profits thereof did not pay his Clerk, and alledging that the Judge ought from motives of friendship to throw any little advantage in his way that might occur from the rights of his office.

But the Judge still declined the request from a sense of impropriety and apprehension of censure. At length the said Marshal told the Judge that finding him so very nice and difficult, he had been with Mr. *Blair M'Clenachan*, and made up matters with him; so that if the Judge would give the agency to Mr. *M'Clenachan*, of the shares in question, it would answer his (the Marshal's) purpose and interest just as well.

The Judge, happy to be rid of the embarrassments he was under on the score of friendship, gave the said *Matthew*, then Marshal, reason to believe (but no absolute promise) that Mr. *M'Clenachan* should be appointed agent.

Thus matters rested for some days, after which the Judge being at the Marshal's, and they alone in friendly conference; the Judge informed the Marshal, that a thought had just occurred which he would in confidence mention, requesting his opinion thereupon, and declaring he would be bound by it. And then observ-

ed to the Marshal that he was about to throw into Mr. *M'Clenachan's* hands, many thousand pounds, by giving him the agency.

That Mr. *M'Clenachan* had wrought him much trouble in his office, had never shewn civility of any kind, and even neglected the common compliment of his hat, when they met. That he heard much of Mr. *M'Clenachan's* politeness and generosity to other persons and submitted it, whether it would not be as proper, if Mr. *M'Clenachan* should make him a present of a suit of cloaths, as well as to other persons who had not been as beneficent to him or done him such substantial favours, and finally observed that this was a matter of delicacy and doubt. To which the Marshal replied, that in common justice Mr. *M'Clenachan* ought to make some acknowledgment for so considerable a favour—that there was no impropriety or indelicacy in the Judge's receiving such a present, should it be offered; the appointment to an agency not being a judicial act, but a voluntary favour of the Court; no more conversation of any importance passed at that time on the subject.

Some days after, the Judge asked the Marshal whether he had ever mentioned any thing of this affair to Mr. *M'Clenachan*, who replied that he had not had a favorable opportunity, and these were the only times in which the matter was touched upon; excepting that some short time after the Judge thinking on further consideration that the thing was improper, declared his better sentiments to the Marshal, and absolutely forbid him proceeding in it. But told the Marshal he should expect Mr. *M'Clenachan* would at least ask the Judge for the agency, a ceremony he never dispensed with—as he thought the favour worth asking for, if worth possessing; and declared he would never make the favours of his office so cheap as to force them on persons who would not condescend to request them.

Mr. *M'Clenachan* however neglecting to ask for the agency in question, the Judge frequently urged this sentiment to the Marshal, which circumstance the said
 Marshal

Marshal hath in his deposition falsely and maliciously applied to the suit of cloaths, all ideas of which had long since been totally discarded by the Judge. After this, above a fortnight passed, in all which time Mr. *McClenachan* never called upon the Judge, or gave the least intimation that the agency would be acceptable to him. The matter was also dropped by the Marshal, who seemed rather to avoid any conversation on the subject. In the interim, other reasons occurred to the Judge for not appointing Mr. *McClenachan* agent, one of which was, that he was a principal owner of the *Holker*, and another, because the Marshal having had great good fortune in the arrival of a valuable prize (the *Ncedham*) taken by one of his privateers, the Judge thought the agency was no longer an object with him: And lastly, because the Judge on reflection thought himself right in refusing to make the Marshal agent, but found it would be continuing the substance, only altering the form, in appointing Mr. *McClenachan* agent, knowing that it was to serve the purpose and interest of the Marshal.

For all these reasons, and to relieve himself at once from surrounding difficulties, he finally gave the agency to Messrs. *Meade* and *Fitzsimons*.

It is not to be wondered at that Mr. *McClenachan* did not apply for the agency. As it appears since, that he was totally ignorant of the whole affair; Mr. *Clarkson* having never mentioned the matter to him at all, till after the appointment of Messrs. *Meade* and *Fitzsimons*, having imposed a falsehood on the Judge to serve his own avaricious purposes.

As to the second charge, the said *Francis Hopkinson* saith, that the ship *Albion* was captured in the North seas by two vessels belonging to *Robert Morris*, Esq. and others, sent into this port and libelled here. It appeared from her papers exhibited to the Judge that her cargo was altogether salt, being eight or nine thousand bushels. A claim was also filed on behalf of her Majesty the Empress of *Russia*; as salt was scarce at that time,
the

the Judge to do a public service without injury to the public, waited on Mr. *Morris*, and observed to him, that as a claim was filed, the decision might be dilatory; that if the cargo waited till condemnation, it would be distributed in kind, and so fall into the hands of a few. That he thought salt water-born, and after so long a voyage might properly be considered as a perishable article, and sold by vendue before condemnation under the Act of Assembly; and that it would be very popular and a public good, if this salt should be sold in small lots, so that the house-keepers might have an opportunity of supplying themselves reasonably.

To this Mr. *Morris* after a day's interval consented, and a writ of sale in the common form was issued, and the salt advertised to be sold. His Excellency the President seeing the advertisement, took offence and wrote to the Marshal on the subject. The Judge on seeing this letter waited on the President and declared his motives.

The President observed that if the law was inconvenient, methods might be taken to have it amended; but that whilst it was the law, it ought to be held sacred; and that salt could not be considered as a perishable article within the meaning of the Act. The Judge, in deference to the President's opinion, immediately ordered a survey; and on the report of the Surveyors, that the cargo was not in a perishable condition, countermanded the sale, and the cargo remained untouched 'till after condemnation.

And the said *Francis Hopkinson*, by and under protestation, that the said articles, and the matter in the same contained are not sufficient in law to maintain the aforesaid impeachment against him; and saving to himself (and which he prayeth may be saved to him) both now and at all times hereafter, all and all manner of benefit and advantage of exception to the insufficiency of the said articles in point of law: Nevertheless for plea thereto he saith, that he is in no wise guilty of all or any the crimes, offences or misdemeanors, of what nature,

ture, kind or quality soever, by the said articles of impeachment charged upon him, in manner and form as in and by the said articles is supposed.

Wherefore he submitteth himself, and the justice of his cause, to this honorable Court, and prayeth to be discharged of the premises, and to be hence dismissed and acquitted of all the matters, crimes, misdemeanors and offences, in and by the said articles of impeachment charged upon him.

FRANCIS HOPKINSON.

Philadelphia, Dec. 18, 1780.

Messrs. *Smith* and *Campbell* from the honorable House of Assembly, having informed this Board, that a new charge had been this day presented against the Hon. *F. Hopkinson*, Esq. which was now under the consideration of the House, and submitting to the Board, the propriety of deferring the trial on the former articles.

Resolved, That the hearing be deferred until Thursday next at eleven o'clock in the Council chamber.

This order was notified to Mr. *Hopkinson* by the Secretary of Council, on the same day.

WEDNESDAY, *December 20.*

PRESENT as above.

Mr. *Galbraith* from the Hon. House of Assembly laid before the Board a further article of Impeachment against *F. Hopkinson*, Esq. Judge of the Court of Admiralty for exacting and receiving illegal fees; which being read,

Resolved, That the said *Francis Hopkinson*, Esq. be furnished with a copy thereof, and that he be desired to give in his answer thereto as soon as possible.

This was accordingly made known to the defendant on the same day.

THURSDAY,

THURSDAY, *December 21.*

PRESENT as before.

A letter from *Francis Hopkinson*, Esq. Judge of the Court of Admiralty filed, An Answer to the third article of impeachment exhibited against him by the House of General Assembly, was read, as follows, viz.

And the said *Francis Hopkinson* in answer to the third article of impeachment brought against him, saith:—

That it hath been the stated custom for the Register of the Court of Admiralty to draw out and deliver to the Marshal, the bills of costs, in every cause, and for the Marshal to collect and account with the Judge for the sum total of his the Judge's fees. That during his being in office he hath never seen a bill of costs in any cause whatever, or ever heard any complaints made of his fees being illegal or oppressive.

That he hath never conversed on the subject with any person whatever, one instance only excepted, viz. When early in office a cause of a personal nature, where no vessel was concerned, coming before him, he asked the Register, How the fees were to be adjusted in such a case, as the Act of Assembly seemed to refer to vessels of certain tons burthen. To which the Register replied, That for services not referred to in the Act, the custom was to charge the fees according to the ancient rates, allowing 40 for one for depreciation. To which system the Judge gave his assent, and acquiescence as reasonable and right: That the Judge never undertook to determine, what might be services included in the Act, and what not. That as no complaints were ever made, he thought all was right and no injury done. That in the case exhibited by the honorable House of Assembly of the brig *Recovery*, neither the captors or any person concerned, ever applied to the Judge to have the bill of costs scrutinized,

nized, or suggested to the Judge, or to any other person to his knowledge, that they thought themselves aggrieved. That in the case of the said brig *Recovery*, many courts were held by adjournment, and arguments had of a complex and difficult nature; that besides the prosecution of the libel by the captors, a claim was filed by *Robert Morris*, Esq. on principles entirely new, and which had nothing to do with the simple capture and condemnation of the prize; and that in the said cause also two or more courts were held and depositions taken, &c. on the trial of two negroes for freedom or slavery, and also on agency appointed, for all which services, the Register hath, as the Judge is informed and believes, charged the former customary fees and the moderate exchange of 40 for one. That the Judge can and will produce undoubted testimony that he hath never been covetous of his fees, or made any efforts to enlarge and encrease them beyond the bounds of justice and moderation: On the contrary hath always shewn a ready disposition to save expence to parties by shortening the time for condemnation in clear cases; by remitting his fees in cases of poverty and small property, and in one instance by suffering eight vessels (of small value) to be included in one libel; for the avoiding of expence; where he might legally and rightfully have insisted on eight separate libels, to his great emolument.

And finally that this third article of impeachment is grounded on an opinion as to the construction of an Act of Assembly; for which the Judge is not impeachable; and that the Judge hath all probable reason to suppose that his opinion was right; as no person, during the whole of his business in office hath ever made any complaint on this head.

And the said *Francis Hopkinson* prays that this his answer to the third article of impeachment, may be annexed to, and incorporated with his answer to the two former articles, and to have reference to his former
pleas

pleas of not guilty, and demurrer to the charges brought against him.

FRANCIS HOPKINSON.

Philadelphia, 20th December, 1780.

Ordered, That the same be sent to the committee of the honorable House of Assembly, appointed to support the said impeachment.

Ordered, That the committee of the honorable House of Assembly, appointed to prosecute the charges exhibited against the honorable *Francis Hopkinson*, Esq. Judge of the Admiralty, and the said *Francis Hopkinson* be informed that the Council is now ready to hear the said charge and defence.

The honorable *James Smith*, Esq. and *Robert Galbraith*, Esq. the committee of the honorable House of General Assembly, appointed to prosecute, &c. and the aforesaid *Francis Hopkinson*, together with the Attorney-General of the state, attended in the Council-chamber, and the doors of the Council-chamber remained open.

His Excellency presented to the said committee of Assembly, the answer of the said Judge, abovementioned, to the last charge exhibited against him.

The said committee informed the Council, that Mr. *Matthew Clarkson*, a principal witness in the cause depending, was ill in bed, being afflicted with the gout, and prayed that an order may be made for taking his deposition in the presence of the committee and the attornies of the defendant.

It was moved by *James Wilson*, Esq. Attorney for the defendant, that the charges against the said *Francis Hopkinson*, Esq. be now read; and thereupon Mr. *James Smith*, one of the committee read the charges, as follows, viz. *Here the articles were repeated.*

(Signed)

F. A. MUHLENBERG, *Speaker*
of the General Assembly.

(Attest)

SAMUEL STERETT, *Clerk of the*
General Assembly.

The

The Attorney-General read two several replies of the said *Francis Hopkinson* to the said charges.

Mr. *Ingersoll*, counsel for the defendant in his behalf, declared his consent that the deposition of *Matthew Clarkson* should be taken agreeable to the motion by Mr. *Smith*: and thereupon,

Ordered, That the deposition of *Matthew Clarkson*, touching the cause now in hearing before the Council, be taken this afternoon, at 4 o'clock at the house of the said *Clarkson*, in the presence of the committee of the House or either of them, and of the counsel of the said *Hopkinson* or one of them, and that a committee of Council do also attend.

Ordered, That the Vice-President, Mr. *Read* and Doctor *Gardner* be a committee for the said purpose.

Philadelphia, }
Pennsylvania, ff. }

Matthew Clarkson, Esq. being sworn, and cross-examined, deposeth and saith, that on being asked, Whether the conversation concerning the suit of cloaths happened at the same time the reconciliation took place, he answered, that I think it was not, but very soon after, within the space of forty-eight hours.

Ques. Did you, Mr. *Clarkson*, apply for the agency of these unrepresented shares?

Ans. A considerable time before this interview I did apply to the Judge for the agency aforesaid, and I am confident it was before the interview with the Judge and Mr. *McClenachan*.

Ques. When this conversation happened, Mr. *Clarkson*, was there any present but the Judge and yourself?

Ans. No person.

Ques. When this conversation was introduced between the Judge and you concerning the suit of cloaths, did he propose it to you as a friend for your advice and opinion?

Ans. I did not consider it in that light, but had daily reason to believe it proceeded from a desire of having

the cloaths, as the Judge spoke to me almost every time he met me upon the subject.

Ques. Did the Judge ever ask you your sentiments of the propriety or impropriety of receiving a suit of cloaths?

Ans. I do not recollect that he ever did.

Ques. Did you ever mention to the Judge, that you thought there was no impropriety in the thing, as it was not a judicial office?

Ans. I do not recollect any such idea.

Ques. Did you ever mention to the Judge, that the appointment of Mr. *M'Clenachan* as agent for the unrepresented shares, would serve and answer your interest and purpose as well as if you were appointed yourself?

Ans. After the Judge had agreed to appoint Mr. *M'Clenachan* agent, I told him, it would be relieving me of a great deal of difficulty in settling for those shares, as Mr. *M'Clenachan* had already advanced considerable sums to most or all of them.

Ques. Did the Judge ever desire you not to mention the suit of cloaths to Mr. *M'Clenachan*, for that he (the Judge) had upon consideration discarded the idea?

Ans. Never, to my recollection; I believe not, because the Judge speaking at the Coffee-house on the subject referred to in the deposition, seemed to assign his being neglected as to the suit of cloaths, as one reason why he had appointed other agents.

Ques. Did the Judge ever assign Mr. *M'Clenachan* not asking the agency, as the reason why the Judge did not give it to him?

Ans. He never did, unless he may have mentioned it at the time, when he informed me of his having made another appointment, and even then, I do not recollect that he did, as I always, until that moment, believed, that Mr. *M'Clenachan* would be appointed.

Ques. At what time were the fees of the Judge, in the cause of the brigantine *Recovery*, paid to him?

Ans. They were settled in an account with the Judge,
which

which I drew out, and sent to him, about the 30th of October.

Ques. put by the Attorney-General. In the account rendered by you to the Judge, was it specified that thirteen hundred pounds were the fees you had received on the condemnation of the brigantine *Recovery*, in behalf of the said Judge?

Ans. Yes.

Ques. Was the balance of that account paid to the Judge?

Ans. Yes.

Philadelphia,
Pennsylvania, ff. }

ON the 21st day December, Anno Domini, 1780, before me the subscriber, personally appeared, *Matthew Clarkson*, Esq. late Marshal of the Admiralty, and being duly sworn, saith, that the within answers to the questions in the within pages, numbered 1, 2, &c. are true, to the best of his knowledge and remembrance.

JAMES READ.

On motion of Mr. *Wilson*, that the deposition of *Robt. Morris*, Esq. a material witness in the case now in hearing, and whose state of health rendered his attendance in court very uncertain may be taken in like manner as is ordered in the case of Mr. *Clarkson*, and the committee of the House assenting to the same. It was agreed to by the Council, and the same committee directed to attend the taking of the said deposition.

The Court adjourned to ten o'clock to-morrow morning.

FRIDAY, *December 22.*

PRESENT as above.

The committee of the honorable House of General Assembly, *Francis Hopkinson*, Esq. and the Attorney-General

General of the state attended in the Council-chamber, the doors of the Council-chamber remaining open.

Mr. *Smith* moved that the deposition and cross-examination of *Matthew Clarkson* be now read; and the same was read by Mr. *Galbraith*.

Mr. *Smith* moved that testimony be taken as to the first article separately, to which no objection was made. And thereupon Mr. *Gerardus Clarkson*, was called in, sworn, and examined.

William Lewis, Esq. Mr. *Thomas Fitzsimons*, *Andrew Robeson*, Esq. *Blair McClenachan*, *Robert Morris*, Esqr. and Mr. *Wm. Heysham*, were called in and sworn in like manner, and gave an account of what they knew respecting the case now before the Council. The following questions and answers were put and written the same day.

QUESTIONS and ANSWERS.

Mr. *Robeson* (sworn.)

Some time early in last May, the Marshal, Mr. *Clarkson*, made a return that there were certain shares for whom there were no agents, of some of the *Holker's* crew. Within a few days after I saw the Judge, who told me the Marshal had applied to him for the agency of these shares. He had told Mr. *Clarkson* he thought such appointment would be improper, as he was a principal officer of the Court, in case of any improper conduct there was no officer to serve process, that he saw the Judge again who told him that *Clarkson* had again applied to him, and urged the request on the score of friendship, that he had repeated his objections, to which *Clarkson* replied, that the situation of his accounts with *B. McC.* rendered it very convenient—that the Judge declined it. That some time after he *Cl.* proposed to the Judge to appoint Mr. *McC.* that that perhaps would answer as well. The Judge mentioned he had given him (*Clarkson*) great expectations that *B. McC.* should be appointed. He afterwards mentioned that he had thought further on the question.

That

That he had met *B. M'C.* frequently, that he (*B. M'C.*) had not mentioned the subject to him, and that Mr. *M'C.* had never asked the appointment, that when he met him in the street, he had taken no notice of him, not paying him the ceremony of the hat, that if the favour was worth his receiving it was worth asking. That besides it appeared to him to be improper, that an owner should be appointed, that it appeared to be the design of the law those agencies should be thrown into other hands. Those conversations happened within about a fortnight. That about the 20th May Mr. *Fitzsimons* applied for the necessary papers. *Meade* and *Fitzsimons* being appointed to the agency. That the Judge soon after informed him, that he had now relieved his mind from the embarrassment respecting the agency by having given it to unexceptionable persons. That altho' *M'C.* was offended.

Mr. *Clarkson* said,

That he had given to Mr. *M'C.* expectations of being appointed agent, that he had taken steps accordingly and had been made to appear little by it, that he thought it a very extra step.

Nothing passed between *M'C.* and him respecting *C's* applications but on *B. M'C's* account—That he had never heard any thing of a suit of cloaths proposed until the charges were exhibited. When he heard what the Marshal urged, and the Judge's representations in justification of himself.

Question by Attorney. Did the Judge ever mention to you his expectation of a suit of cloaths?

Ans. Not until the evening of the day on which the Judge complained to the Council against the Marshal. There were frequent conversations concerning the motives of the Judge, but I never heard any thing of the suit of cloaths.

Ques. Did you ever hear any thing concerning a Judge's receiving presents?

Ans. I have heard the case of a Judge in *New-York*.

Ques. Did the Judge approve, or disapprove of this?

Ans.

Ans. I do not recollect the manner, but he seemed to disapprove it.

Ques. When was it that this conversation passed, before or after this affair?

Ans. I can't recollect but believe long before; I think the Judge disapproved of such conduct.

By *J. Smith.*

Ques. Did the Judge ever inform you that he had warned and forbid the Marshal of the Court of Admiralty to offer the cloaths?

Ans. I never heard of the matter until the time already mentioned, when it was mentioned by both parties.

Mr. *McClenachan* (sworn.)

In the beginning of the privateering my agency was verbal, but after some inconveniency arising, written ones were taken—some were omitted, it was referred to the Judge.—Some time after the Marshal told me he thought the Judge would appoint me, and I advanced money to the people to keep them quiet—he was however informed that *Meade* and *Fitzsimons* were appointed, that it made no difference to him, he therefore made up his accounts and sent them the balance—That as to the suit of cloaths he had never at that time heard of any thing of the kind from any one.

Question by J. W. You have done a great deal of business with the Judge, did he ever intimate to you that he expected a present from you?

Ans. No.

Question by Mr. Ingersol to Mr. G. Clarkson.

Whether you have ever heard the late Marshal say, “it would be a particular gratification to him, or do his heart good, if Mr. *Hopkinson* were discharged from his office?”

Objected to—argued—and put.

Ans. I have not the least idea of it.—I have said it myself; but never heard an expression of the kind from my brother.

Attorney

Attorney for defendant, rests the testimony on the first charge, so far as testimony goes, particularly to this point, reserving some testimony which goes to the whole of the charges to be given at the close of the trial.

Mr. *Smith* then read the second charge, and the Attorney-General read the allegation of defendant and his plea of *non cul.*

Mr. *Galbraith* read the warrant for selling the cargo of the ship consisting of salt, No. 9, page 9.

Obj. No return thereof made to the Judge by the Marshal of the Admiralty.

J. D. *Sergeant* adduced.

Mr. *Smith* opened the testimony—that the evidence is to prove, that there had been no writ of appraisement, or of view previous to the writ of sale.

The writ for inspection dated 11th August, and return dated the 17th, were read—the publication for sale previously being admitted as stated in the answer to the charge by the Judge.—The witness therefore is unnecessary.

Mr. *Wilson* read the writ of countermand dated the 11th August forbidding the sale, and stating the cause of forbidding.

Robert Morris, Esquire (sworn.)

I was part owner of the *Gen. Washington*, which with took the prize in question.

It was thought necessary to put in a claim on the part of the Empress of *Russia* which had the ap: of delay, was informed that it was a sentiment which had escaped the Judge, that the cargo might be sold as being perishable in its own nature—that salt was exceedingly wanted and would *be* of public utility to sell it as soon as possible—and he called on me and mentioned. One of the owners of the *W.* being in the city consented to the sale, and being of opinion with the Judge respecting it, requested J. W. Esqr. to apply for the warrant of sale, which was at his request, granted as has been read; after this the Judge called at my house, and told me the proceedings was not approved by the President.

President. That he thought improper, and asked if the owners were materially affected by the delay. I replied, that if the proceedings were judged improper, I begged that the sale might be stopped, and the proceedings had as in the usual form. That it had been considered by merchants that sugar and salt water-born were in their nature perishable.

Question by Mr. W. Have you been appointed by the Judge to be agent in any case?

Ans. I was in the case of this ship *Albion* because the owners were not here, and the vessel belonged to *Virginia* (for a variety of reasons not material.)

Ques. Did the Judge ever demand or receive from you any present in this or any case of this kind?

Ans. No; never!

The letter from his excellency to the Marshal dated August 9, 1780, and the letter from the Attorney to the Marshal containing his advice and opinion of the warrant for sale, were read.

Here it was remarked by Mr. *Wilson*, That this letter was never communicated to the Judge until the charge was laid before the House.

Question to Mr. Morris by Mr. Willson.

Is there not a loss on the cargoes of salt?

Ans. There was a deficiency of about 130 bushels below what the cocket mentions.

By the Attorney-General. Was not the price of salt lower at the time of advertisement than later in the fall?

Ans. Not in the present case.

Ques. Is it not generally so?

Ans. It is when the trade is open.

Question by attorney for plaintiff. Was salt much wanted at that time?

Ans. It was much wanted.

Ques. to Mr. Robeson. At what time was the sale of the *Albion's* cargo?

Ans. It was not sold, it was divided about the 5th of September.

Adjourned to 4 o'clock, afternoon.

Same

Same day, 4 o'clock, P. M.

The Council met ; present as in the forenoon.

Mr. *Smith* then read the third charge ; Mr. Attorney-General read the reply of the said *Francis Hopkinson* to the said charge.

Mr. *Smith* read the bill of costs in the case of the brig *Recovery*, signed by Mr. *Clarkson*. Judge's fee £. 1300.

The deposition of *Matthew Clarkson*, late Marshal, was read by Mr. *Galbraith*.

Register of the brigantine *Recovery*, to shew her tonnage. 40 tons or thereabouts.

Ques. Was this register among the papers in your office ?

Ans. Yes.

Ques. Did the Judge see this register ?

Ans. As it was handed to him, no doubt he saw it.

Ques. Are there any other papers which shew the vessel's tonnage in your office ?

Ans. Yes, there are.

Mr. *Smith* admitted that the tonnage of the brigantine is 80 tons.

Attorney for the defendant observed that the tonnage of the brig was not material in this defence, but that as a British register had been brought to shew that she was a small trifling vessel, it became a duty to remove the impressions made by it ;—That the case of the brig was unprovided for by the law which refers to the tonnage and rests on the former law, and will be defended on that ground.

Answered by Mr. *Smith*.—Who read the 26th article of the Constitution.

Mr. *Robeson* was adduced to prove the former custom of fees in like cases.

Mr. *Smith* objects to the evidence as being improper

per to produce proof of former customs in opposition to a law.

Mr. Ingersoll. The witness is produced to shew upon what principles the bill was made out; and the question of the propriety or legality of those principles is to be argued, and to be judged of by the President and Council.

Mr. Wilson read the 26th section of the Constitution, and claimed moderate and adequate fees. (See page 60.)

Mr. Smith replied, but his objections were overruled as being out of time.

Mr. Robeson, some short time after the Act of Assembly now read, was passed, *Mr. Hopkinson*, the Judge, mentioned, that there were many cases not mentioned in the Act and desired to know how the fees ought to be made out. I told him that in such cases, I supposed, they must be made out according to the old Act and usage, and desired to know whether it would be reasonable to allow for extra services, and that it would not be objected to.

That in case of parties not attending at the day, or by repeated delays, that in such case the former fees might lawfully be charged.

In the present case of the brig *Recovery*, there was a claim put in, that there were adjournments in this case, that the determination of the case of the negroes was not determined 'till within a few days—That the fees were made out with a view to the final decision of the case, which would have made but little alteration whether they should be condemned or acquitted.

Ques. Were the charges for appointing of agents for unrepresented shares, charged in the accounts of the vessels?

Ans. It ought not to be; but whether it was ascertained in the bill delivered to *Mr. Clarkson* or not, I cannot ascertain.

Ques. I find charged, fees for holding of court, one pound four shillings. Is it customary to charge for holding a court?

Ans.

Ans. Mr. *Ross* always charged for holding a court, twenty shillings, and four shillings for——

Ques. Whenever the party appeared before the court, is it customary, to charge for holding a court?

Ans. Yes—and he assigned the reason.

Ques. Did you ever communicate to the Judge the estimate of the fees?

Ans. Yes.

Ques. You say the charge for deciding the cause of the negroes, was not due when you made out the account?

Ans. It was not then due.

Ques. You say then, that those are the fees customarily charged?

Ans. Yes, it is according to the practice by Mr. *Ross* and Mr. *Skippen*, as far back as I know any thing of it.

Ques. Was this conversation after passing the wheat bill?

Ans. It was.

The witness acknowledges his neglect in not remarking at the bottom of the account, the sum to be charged to the unrepresented shares.

Ques. In what did this case differ from the usual or common cases?

Ans. There was a third vessel in sight which filed a claim, but was not able to support their claim not having a commission. The part of the charges arising from this claim, was noted in the account to be paid by them. Here the witness offered a sketch of a bill of costs upon the extent of the fees due in the case which exceeded the bill delivered, by several hundred pounds.

Ques. Have you ever had any particular directions from the Judge as to the manner of making out the charges?

Ans. He directed in general, that in such cases the bill should be made out upon the former usage.

Ques. Respecting the claims of a negro for his freedom?

Ans.

Ans. The claims of negroes for their freedom are never charged.

Ques. You have mentioned, that bills of expences are frequently made out before they really become due, has those fees ever been *demanded* before the service was performed?

Ans. I don't know what may be meant by *demanded*; I understand, that the Marshal pays the fees to the Judge as the Judge's necessity may require, or as the Marshal may be in cash.

Ques. Do you shew the bills of cost to the Judge before you deliver them?

Ans. No.

Ques. In cases where bills are made out before the services are done, is it done by the request of the parties or not?

Ans. It is always done at the request of the parties, and for the expedition of their business.

Ques. What was the fee under the former Act for holding a court?

Ans. There are three articles only taken notice of,—&c.

Mr. *Ross* frequently looked at the bills, and where a charge for holding a court was omitted, he directed me to make it.

Ques. by Mr. Wilson. Do you recollect any instance where eight small vessels were contained in one libel?

Ans. Yes, in the case of *Kemp*, in which Mr. *Bankson* was Attorney, and either at his request or the—

Ques. You have been intimately acquainted with the Judge. Have you ever observed him to be disposed to exact with severity the fees to the utmost?

Ans. I never observed any thing of this sort. The question respecting the mode of charging the fees—

Ques. Do you know of any instance of a stipulation being demanded, where the party was too poor to pay?

Ans. By several cases to shew that in the case of persons being too poor to pay, the fees were not demanded, but where claims have been made by seamen—

Ques.

Ques. Did you ever know of any instance of the Judge's hinting to any person that he expected a present?

Ans. I know nothing of the kind, or of any presents that were made him, except a small chicken turtle sent him by some captain, whether by a claimant in the court or not, I cannot tell, and of the wine which has been talked of; I recollect that a captain who had a cause depending, sending a cheese to the Judge, which he refused to accept and sent it back.

Mr. *Fitzsimons*, sworn.

In June last Mr. *Hopkinson* called at our counting-house, and offered the house of *Meade* and *Fitzsimons* the agency of the unrepresented shares, which they agreed to accept and entered on the business. Afterwards applied to the Marshal for the monies due them, and had a list amounting to $26\frac{1}{2}$ on one vessel, and $23\frac{1}{2}$ on another. On applying to the Marshal he seemed dissatisfied, said the agency had been disposed of or promised, and measures taken in consequence of that promise and money paid thereupon. Upon receiving this answer I informed the Judge, he said there had been some such promise, but that Mr. *McClenachan* never had applied regularly for an appointment, and on further consideration he did not think it proper to appoint one who was so largely concerned in privateers, that witness offered to resign the agency, if the Judge, Marshal &c. could agree among themselves. The Judge declined this proposition, that Mr. *McC.* was improper and could not have it, that if they decline some other persons must have it, they might therefore as well keep it. We wrote a letter to the Marshal, informing him that the appointment was unsolicited, but as it was given they would wish to proceed in the business. The Marshal still objected—many conversations ensued on the subject.

They afterwards met at the Judge's house on the business, when a compromise was agreed to, which was, that all the monies *McC.* could shew he had paid on the unrepresented shares should be paid to him, and the balances to be paid to Messrs. *M.* and *Fitzsimons*.

Judge

Judge never intimated to him that he expected any present either directly or indirectly.

Nothing passed in the conversations from which the witness knew that any gratuity was expected by the Judge for appointing *McClenahan*.

Capt. *William Heysham*, Sworn, being called by the committee.

Ques. Do you know the brig *Recovery*?

Ans. I do.

Ques. What's her tonnage?

Ans. About seventy-five or eighty tons, not exceeding ninety.

Here he explained himself by remarking the different tonnage, the merchant's tonnage being less than the carpenter's tonnage, of carpenter's tonnage about eighty or ninety tons.

Ques. You're clear she does not exceed 100 tons?

Ans. Yes in my judgment.

Mr. *Lewis* called up, and asked.

Ques. What do you know of the Judge (*Hopkinson*) admitting eight vessels in one libel?

Ans. Mr. *Hopkinson* applied to me to know what was my opinion of admitting eight small vessels in one libel, expressing an earnest desire that it might be done to save charges, if it was consistent with law to do it. I knew of but one instance in point, and in that the Judge (Mr. *Ross*) ordered separate libels to be filed, but that I knew of no rule of law, in the case, and that therefore I thought it might be admitted. And I think it my duty to observe that Mr. *Hopkinson* had not insisted on the fees, where the claimants were too poor to pay them.

The Court adjourned 'till ten o'clock to-morrow morning.

SATURDAY, *December 23.*

PRESENT as before.

The honorable committee of the General Assembly, honorable *Francis Hopkinson*, Esq. the Attorney-General of the state, and the Attorneys for the defendant attended in the Council-chamber.

Mr. *Smith* adduced cases to support the charges.

Mr. *Wilson* replied.

At the request of the honorable committee of the Assembly the court was adjourned till three o'clock in the afternoon.

Same day in the afternoon, 3 o'clock.

Present his excellency the President, honorable the Vice-President, General *Lacey*, Mr. *Read*, General *Potter*, Colonel *Piper* and Doctor *Gardner*.

Mr. *Smith*, one of the honorable committee of the General Assembly, *F. Hopkinson*, Esq. the Attorney of the state, and the Attorneys for the defendant attended in the Council-chamber.

The Attorney-General of the state opened the argument, in behalf of the state.

Mr. *Ingersoll* and Mr. *Wilson*, Attorneys for the defendant—replied.

Mr. *Smith* on behalf of the state replied to the Attorneys on the part of the defendant.

The Attorney of the state closed the argument.

The court adjourned till next Tuesday morning at ten o'clock.

TUESDAY,

TUESDAY, *December 26.*

PRESENT his excellency the President, the honorable the Vice-President, Mr. *Lacey*, Mr. *Potter*, Mr. *Piper* and Mr. *Read*.

The Council having met agreeable to adjournment. Mr. *Smith* of the committee of the General Assembly attending, and *Francis Hopkinson*, Esq. also attending, the President read the following

D E C R E E.

IT is not usual to enter into the reasons of the judgment upon occasions of this kind, but the importance of the present prosecution makes it necessary.

In the first place it is observable, that the commission of the Judge is during good behaviour; crimes only are causes of removal—the cause is of great importance as it respects the officer, and as it comes from the Representatives of the people.

It certainly is of the greatest consequence, that the streams of justice be kept pure—We act in the double capacity of Judges and Jury—It therefore became our duty, and we have examined minutely into the evidence—It is immaterial from what motives the prosecution has originated, any farther than to determine how far it may affect the credibility of the witnesses—perhaps few public prosecutions have taken their rise from pure regard to the public good, nor is it of any consequence with what views the Assembly forwarded the impeachment—Whether it is supported, is the only object of our enquiry—The cause has been ably argued on both sides.—

The President then read the first article.

The late Marshal, Mr. *Clarkson*, swears, that in a conversation he had with Mr. *Hopkinson*, (testimony of Mr. *Clarkson* read) the stress of the prosecution must depend on this testimony of Mr. *Clarkson*, he himself

self does not state the suit of cloaths as a condition, or *sine qua non*, without which Mr. *M'Clenachan* was not to have the agency ; several circumstances seem to confirm what the Judge says, that he mentioned this matter as a thought that had occurred to him, and by way of taking the opinion of his friend upon it—The Judge and Mr. *Clarkson* were at that time intimate friends—he took no notice of it, until after the Judge had complained against him. He was exceedingly disgusted at the agency not being given to Mr. *M'Clenachan*—it seems strange if he thought this had been made a condition that he made no mention of it in his complaints. Either the Marshal approved the prosecution or he did not—if he did not, why not say so. If he did, why not mention it to Mr. *M'Clenachan*, if he thought it a condition not countermanded—the story of want of opportunity could not have been the reason, for he mentioned the agency—it would have required but a few words more to have mentioned the condition had there been one.

In the next place, tho' Mr. *M'Clenachan* does not recollect any countermand, yet as the Judge gave the agency to Messrs. *Meade & Fitzsimons*, not only without receiving any compliment, but as no hint or suggestion was made that any such was expected, this looks like confirmatory of the representation made by the Judge. Mr. *Clarkson* in one part of his testimony is very positive, in another very cautious, so far as respects the mention of the suit of cloaths, he is entirely clear—as to any explanatory circumstances he does not remember—He is asked, did the Judge request your opinion and advice upon the point ? he does not recollect—If he is cautious in determining the complexion of the business, surely we ought to be in founding our opinion.—Indeed we should have had very little difficulty had it not been for the testimony of Mr. *Lewis*—but the conversation between him and the Judge happened a good while ago—a few words make a great difference—a gentleman cannot be supposed to recollect with an entire exactness—we cannot but consider Mr. *Lewis* as

a secondary witness, and therefore cannot overrule the presumption arising in favour of the Judge upon Mr. *Clarkson's* testimony from the circumstances that have been mentioned—but here another question arises, *quo animo?* with what mind was this done—for a great deal depends upon the intent—every killing is not murder—on a dispassionate consideration of the character of the Judge, his general conduct in office, and all the circumstances we do not think there is any proof of corruption—we could have left this charge without any further animadversion had it not been for some doctrines advanced by the counsel for the Judge, which we think proper to make some observations upon.—In an infant State it is of the highest importance, as we said before, that the streams of justice should be kept pure, and that the people should have a confidence in the integrity of the Judges.—Not only the taking a bribe, but even soliciting it, tho' not falling perhaps strictly within the definition of bribery would draw down the vengeance of the State—Whether for a Judicial officer or one that did not concern the administration of justice, whether by a Judge sitting on the seat of Justice or this Council in their capacity as such; the office of a Vendue-Master is not a judicial office, but we should esteem it criminal for any member of this Council to accept a compensation for his vote to an appointment in that office.—The man who can best serve the public is the proper object of choice, it is enough that the office is an office of trust, whether judicial or not makes no difference—and we think the observation of the Attorney-General that the appointment of an agent is done by the Judge, as such, is well founded, and if we had been satisfied of the fact, that the Judge had either received or solicited a compensation in this consideration we should have been at no loss to have declared him guilty—and we take this opportunity to mention that we conceive it indelicate for a Judge to accept presents from persons who frequently have business

ness before him, tho' no cause be then depending, such as owners of privateers.—In short the *present* should appear to be made to the MAN, and not to the OFFICER.

The President then read the second article.

The Judge acknowledges that he did make a mistake in the issuing the writ, and upon being informed of the error rectified it—to make a Judge answerable for the veracity of every assertion contained in the forms of process would be very unreasonable—I will not say how far a Judge may be answerable in a criminal prosecution for giving a judgment contrary to a plain law; but then it must appear that he acted wilfully wrong, and not from honest, tho' ill judged designs—but here was a point of some doubt.—The Judge supposed, and there was some colour for the idea that the law was merely *directory*; that he was to have recourse to the intervention of a survey only in case of uncertainty, and to inform his conscience—but that where he was at no loss for the very nature of the article to determine it perishable, of course, that the step was unnecessary.—Salt is thus considered sometimes.—If for instance, insurance is made on it at sea, it is treated as a perishable article.—If a mere error of judgment was to be turned into a subject for criminal prosecution, we must, as was observed by one of the learned counsel for the Judge, get infallible Judges. We are therefore at no loss to pronounce an acquittal upon this article, more especially as the mistake was rectified as soon as discovered.

The President then read the third article.

This charge has been considered by many to be more likely to endanger the Judge, and to occasion a sentence to his disadvantage, than the others.

The Judge answers that he took fees according to the former tables, and the practice established at his coming into office. Now, altho' the degree of punishment ought not to make any difference, nor enter into consideration where the matter is plainly proved, yet more caution becomes necessary in proportion to the consequences

quences of conviction—in this case the penalty by the Constitution is very great.*

There are in almost all offices compensatory as well as specific fees.—In fee laws, laws made for the regulating the fees of officers, it is very difficult to enumerate all the services. In such cases compensatory fees must be allowed, or the necessary business will not be done. There is a great difference between exacting more than the specific fees, and asking fees for services where nothing is provided.—But it is said that the law on which this charge is founded, intended to have excluded all other fees except the wheat. But every part of this law was not attended to. In a preceding paragraph it is said, that the fees of the said officers shall be estimated and paid according to the price of good merchantable wheat in the manner following, that is to say, the said fees as they were regulated by law or practice under the late government of *Pennsylvania* before the first day of July one thousand seven hundred and seventy-six, shall from and after the publication of this Act be satisfied in good merchantable wheat, accounting and allowing that a bushel of such wheat, weighing at least sixty pounds, sold formerly in times of war and difficulty for ten shillings. The fifth paragraph mentions that this former one shall extend to the Judge, Register and Marshal of the Court of Admiralty.

It appears therefore in this very law, the principle of making a difference between specific and compensatory fees was adopted—formerly by an Act of Parliament, the
Judges

* 26th section of the Constitution of the state of *Pennsylvania*, established in 1776.

Court of Sessions, Common-pleas, and Orphans' Courts shall be held quarterly in each city and county; and the Legislature shall have power to establish all such other courts as they may judge for the good of the inhabitants of the State. All courts shall be open, and justice shall be impartially administered without corruption, or unnecessary delay: All their officers shall be paid an adequate but moderate compensation for their services: And if any officer shall take greater or other fees than the laws allow him, either directly or indirectly, it shall ever after disqualify him from holding any office in this State.

Judges of the court of Admiralty in the then province of *Pennsylvania*, were allowed £. 15 sterling for every vessel above 100 tons, and £. 10 for every vessel below that burthen—as the same number of tons is mentioned in this Act of Assembly, as applied to the twenty-five bushels of wheat and the forty, it seems probable that this was intended in lieu of those sums. On this construction the law is consistent and complete, and the law and practice agree, and it must appear that the £. 1300 taken by the Judge exceeds what he was entitled to by this mode of computation—here were three causes; the first, libel to decide prize or no prize—that is the object of the law—then the claim by Mr. *Morris*—then the negroes; these are three as distinct causes as if they related to different vessels. At this rate the fees would have amounted to £. 1320—but suppose the matter had not stood entirely on this ground, and that it had appeared the £. 1300 was a sum beyond what the Judge was entitled to, still the charge is not, that he *received* too much, but that he *exacted* too much. We do not say, that the Judge ought not to take care of his officers—But an inadvertence of this kind would not be a ground for rendering a man infamous for life. On looking into the authorities we found they all run in this stile—that the Judges exacted—that business was kept back and delays affected until the money was paid—suppose the court wrong, they ought not to be immediately prosecuted in a criminal way, but complaint should be made, and if they will not rectify the mistake, then it will be proper to pursue in a course of justice—at the same time we take this opportunity to say, that the fees of the court of Admiralty have increased lately extremely, not in the time of the present Judge; indeed, he took things as he found them; as to the agency I do not conceive it to be the spirit and meaning of the act of Assembly, that one should be appointed to every vessel where there are unrepresented shares—the holding of courts for ministerial purposes is wrong also—this practice has taken rise within four or five years—it's distressing

distressing to trade—all the ministerial business should be done at the holding of some court, or at chambers—the other mode is a strained construction of the meaning of holding a court—it is a matter that I am desired to mention, that the Judge direct the Register to prepare a book in which he is to enter all the items of the bills of costs—that people may always know whether they pay unreasonably—the Judge it seems trusted to the Register, and the bill must have been made out in the lump, as it agrees exactly with no rule. When this is done, if on complaint made, errors are not rectified, there will be a proper ground for criminal prosecution. UPON THE WHOLE, WE ARE UNANIMOUSLY OF OPINION THAT THE JUDGE OUGHT TO BE ACQUITTED UPON ALL THE THREE CHARGES.





AN
A C C O U N T
OF THE
IMPEACHMENT, TRIAL,
AND
A C Q U I T T A L
OF
JOHN NICHOLSON, ESQUIRE,
*COMPTROLLER-GENERAL OF THE STATE OF
PENNSYLVANIA.*

P H I L A D E L P H I A :

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M,DCC,XCIV.





AN
A C C O U N T
OF THE
IMPEACHMENT, TRIAL,
AND
ACQUITTAL &c.

On Tuesday the 4th day of December, in the year of our Lord, 1792, and sixteenth of the Independence of the United States, the Representatives of the Freemen of the commonwealth of Pennsylvania, met at the State-house in Philadelphia, and proceeded to business.

ON the 7th they appointed John Swanwick, Thomas Forrest, John Chapman, John Hannum, Samuel Boyd, John Stewart, James Power, Nicholas Lutz, Jacob Eyerly, jun. George Woods, jun. John White, Abraham Hendricks, David Bradford, Albert Gallatin, James Johnston, Cadwallader Evans, Simon Spalding, Stacy Potts, Thomas Morton and William West, Esqrs. a committee to devise ways and means for the supplies of the current year.

On the next day John Canan of Huntingdon county was added to the same committee.

On the 4th of January following, a letter was received from the State-Treasurer, from which the following is an extract.

“FULLY convinced in my own mind, indeed I may say from my positive knowledge, that it never was
the

the intention of the Legislature to embrace within the redemption the so called New-Loan certificates, which in fact never were a state debt.

“ I was much surprised (when after observing among the list of purchasers the name of *John Nicholson* for 65,000 dols. all paid for in redeemable debt without any money) to see in the hands of Mr. *Morris's* Clerk, warrants amounting in the whole to 63,093 $\frac{3}{4}\%$ dols. exclusive of an order on me for 4621 $\frac{6}{100}\%$ dols. due Mr. *Nicholson* for Dollar-money redeemed, which he presented to me as payment for stock in lieu of money.

“ The warrants were properly signed and countersigned, I could not refuse payment; I asked him if he knew how they originated, he said he did not, but that Mr. *Morris* had borrowed them that morning from Mr. *Nicholson*. Having previously heard that one or more hawkers employed by, and even the Comptroller-General himself were running about town purchasing up New-Loans, and that they were so eager in the pursuit that they had raised the market price on themselves from 20/ to 21/6, I got alarmed.

“ I sent a confidential Clerk to the office of the Commissioner of Loans, he returned and told me, that he saw Mr. *Nicholson's* name in the subscription book, but no sum annexed to it. The next morning I went down to Mr. *Smith* and asked him if Mr. *Nicholson* or any body else had subscribed New-Loans, he answered they had, put his hand in a drawer beside him, and pulled out a bundle of New-Loans and said, the Comptroller-General subscribed these and certified them to be genuine and assumable state debt and when he did, he left the subscription blank, and said, he had more to bring.

“ I waited on his Excellency the Governor, the Secretary of the commonwealth, and the Register-General, and an immediate stop was put to this, in my conception, unwarrantable career of speculation, a few more warrants of less moment than the Comptroller's having been previously paid.

“ The

“ The honorable Legislature will pardon me for being thus lengthy, when I declare, that viewing the subject as I do, it is not only a direct violation of law, but a glaring imposition on the public.

“ I have made several calculations ; the most moderate and exact of which is a nett profit to the speculator of near 25 per cent. If the original entries of those transactions are had recourse to in the offices of accounts, they will shew that my calculations are not exaggerated.

“ Be pleased Sir to present to the honorable House enclosure B. being a memorial soliciting to be re-appointed Treasurer for the ensuing year.

“ I have, &c.

“ CHRISTIAN FEBIGER.”

Treasury office,

January 1, 1793.

HON. GERARDUS WYNKOOP, Speaker
of the House of Representatives.

On the motion of Mr. *Gallatin*, seconded by Mr. *Evans*, the above letter was referred to the committee on ways and means to report thereon.

On the 8th the following letters from Mr. *Nicholson*, were presented to the Speakers of both Houses, read, and ordered to lie for consideration.

“ SIR,

“ I UNDERSTAND a communication from *Christian Febiger*, Esq. Treasurer, was yesterday read in the Legislature, containing reflections against me ; knowing my own conduct, I feel myself perfectly secure from injury by any assault he may make, and I defy and despise the attempts, he or any other enemy I have, may make against me.

“ But without regarding the character of the man, it is proper that I should take some notice thereof, I do not wish that the motives of malice which actuate him, may operate to relax from the strictest scrutiny into my conduct, I have this morning applied for and just now obtained

from

from the assistant clerk of the House of Representatives, a copy of the representation alluded to, and was referred to the Printer, where I saw the statement therein referred to.

“On examination I find nothing therein but what hath already been stated in the joint report of the Register-General and myself on the revenues to the Governor, and which hath been heretofore laid before you, except the positive opinion (for they merit not the name of reasons) of Mr. *Febiger*, and some deductions therefrom which are worthy of himself.

“The facts being stated and before the Legislature, I should suppose they needed not the aid of Mr. *Febiger*’s opinion on the subject: If any members of the present House regret the parting with the stock in the manner which was done, or the mode of the redemption of the debt, whether that, on which an interest had been payable half yearly, the unfunded depreciation debt, or the New-Loan debt (the two latter of which were only redeemable through the intervention of the Loan of the United States). They will find the causes thereof in the Redemption Act of last year; and while they lament the adoption of such a system, when a more advantageous one was within their reach, they have also to be thankful to Congress that it was no worse, for had the Legislature of the United States thought proper to have adopted the system of loaning State debts in the extent and manner in which it was first brought before Congress, this law would also have obligated the state to have immediately paid for all the old Bills of Credit emitted by the state to carry on the war, and which might have been subscribed to the Loan of the Union.

“I foresaw, the effects that bill if passed, would have when it was before the Legislature, and did not fail, to members of both Houses, to deprecate the consequences of enacting it, both as it regarded the parting with stock and the redemption of the debt, and also mentioned its operation with respect to the several classes of debt aforesaid.

“When

“When it became a law, I availed myself of the advantage it presented as well as others, the proceedings are regular, the invitation for stock was public, all might apply, and the proposals by Mr. *Febiger*, either by himself or his “confidentail Clerk” were as welcome as any other. With respect to the debt redeemed and for whom, it also stands on record, and hath been already laid before you, and in my purchases or application for redemption, I never used the name of another, not even a “confidential Clerk,” had I thought it wrong I should not have done it, and it generally argues a conviction of impropriety to use the cover of another name, but this will be remembered that *my* purchases were not with the public money.

“As to the rates at which I purchased, they were such as afforded a profit, or I would not have made them, although as he observes, and I suppose found, a competition of prices, soon brought up their value in the market, but it is none of his business what these profits were.

“There are I suppose mistakes in the copy given me, where it reads, 865,000; 863,093⁵⁵/₁₀₀ and 84,621³²/₁₀₀ arising from his mode of prefixing his figures, the first 8 in the three cases I presume were not originally so designed, taking this to be the case, or otherwise I can’t see what he hath to do with the business; whether payment of my warrant was made to Mr. *Morris*, myself, or any other person, to whom I chose to give an order, nor do I see why he should trouble the Legislature with the story of my giving Mr. *Morris* an order for the principal and interest of the Dollar-money also redeemable.

“That Dollar-money however was not mine, it belonged to a person who I believe thought himself degraded in finding Mr. *Febiger* appointed to succeed him in an office he resigned and had once filled.

“From the stile of his letter one would think he had the merit, if there were any merit in it, of effecting every thing as well in the department of the Governor,

as in that of the Register-General and Secretary of the commonwealth, and that he had put a stop to it; the fact is the limited period put a stop to further subscriptions, but those few subscribed, assigned and not paid, will yet be done, the parties are legally entitled thereto, but as a doubt arose with the Governor, I paid Judge *Addison* the cash for the amount of his second subscription for which he was waiting that he might not be delayed as he was from a remote part of the State; the others were of this city and they have not since been brought forward till every objection be removed, but then the parties claim payment as their legal right. There remains but one thing more in Mr. *Febiger's* letter to notice, and that is the information from Mr. *Smith's* office by his confidential Clerk and himself. They are both mistaken or worse, I never delayed an account at that office for subscription till more should be added. The first I took with the certificates, I made two copies of, to expedite my business, I left one of them with the Loan-officer, the other I got him to certify immediately, and it was transferred before I left the office, the next was a few days after and contained what I had purchased in the interim, I sent them down by a messenger, and by him also they were brought back without remaining for any additional certificates to be added.

“On enquiry of Mr. *Smith* I find (as I expected) that Mr. *Febiger* got no such information from him.

I have, &c.

JOHN NICHOLSON.”

January 5, 1793.

The hon. SAMUEL POWELL, Esq. }
 Speaker of the Senate of *Penn^a*. }

“SIR,

“AS the accounts of *Christian Febiger*, Esq. as Treasurer hath been laid before you with his late representation and they also come under my consideration, it may be proper to remark thereon, that the payments

of

of interest of the New-Loan debt in bills of credit as appears in said accounts is in violation of the Act of the Legislature of the 7th April, 1791, which excepted those bills from re-issue or payment, and I was astonished on the exchange of the New-Loan certificates lately for *Joseph Pennel*, Esq. to be informed by him that he had just been paid in those bills and was unable to get any other, and wanted to know what he could do to get the money, I observe it is only to some persons this interest hath been so paid therein.

“ In his letter and in his accounts, he expresses a desire that the Legislature would direct what is to be done with the old continental money and equivalents in his hands, they have already directed them to lie in the Treasury, which in my opinion is the best thing that could yet be done with them. But hath he observed these directions? no; if you look at his accounts No. 13, you will find that he hath been disposing thereof of his own authority, and in a former account he hath disposed of far the greater part of the whole continental money on like authority, and he had even the confidence to declare to me that he knew, at the time he did it that it was not authorized by the Legislature. The Assembly will please to observe that at the same time an offer was made the Legislature of ten per cent. advance upon what they would get if they chose to loan it to the United States. As I will never pass these sums to his credit in violation of law and as in my estimation, they will be of more value than he ever will be able to pay, I think it necessary also to inform the Legislature that he hath neglected to give and record the surety required of him in the manner directed by law. The House need not be informed that his former sureties will not be bound for him under another appointment. There is one thing more which hath in some measure delayed the settlement of his accounts, notwithstanding the Clerk of the late Treasurer (who was at first employed by him, and so cruelly treated afterwards) must have informed him as well of the business generally, as that

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receipts

receipts had always been taken for the interest paid or allowed on the redemption of the dollar-money, yet he neglected to do it, or if he did, to exhibit them as vouchers for the money so paid, this was the more necessary as by an interpretation of law acted on, a great difference was made in the allowance between that emission coming in by taxes and by other means; it is true he hath at last adopted that measure but is was towards the close of the time.

I have the honor to be

with great respect,

Sir, your most obt. servant,

JOHN NICHOLSON."

January 7th, 1793.

The honorable the Speaker of }
the Senate of *Pennsylvania*. }

The following letters were written on this subject soon after——

"S I R,

"I HAVE read with attention the letter of the Secretary of the Treasury of the U. S. dated 21 December, 1791, and the two letters of the Comptroller-General dated 24th December, 1791, and 29th of February, 1792, relative to the construction of the 18th section of the Act of Congress making provision for the debt of the U. S. It appears to me that the word "*those*" in the enacting part of the clause can only apply to the certificates issued by the State, but as that never could be the meaning of the Act of Congress, I agree that the construction given by the Secretary is the only rational one. Be that as it may, it is very certain that neither the New-Loan certificates of *Pennsylvania*, remaining in circulation, nor the Continental certificates in exchange for which these New-Loans had been issued, have been surrendered to the U. S.—It is not less certain that the payment of interest, whether to the state or to individuals has not been suspended, the pre-

sent

sent suspension to the state is but temporary, and arises merely from the extension of the former law of Congress by their Act of last May, and will of course cease on the first of March next, (if the former objections are not revived) and of course it must have appeared to the satisfaction of the Secretary of the Treasury that all the New-Loan certificates have been re-exchanged or redeemed. To have considered them as such is I suppose, what the Comptroller means by the "equitable decision" of the Secretary. It is however of importance to us to know what were the real grounds of that decision, as it is possible that the subscription made lately in New-Loan certificates to the loan of the U. S. may affect it materially. For if the Secretary considered the whole of the New-Loan certificates as actually re-exchanged or redeemed, it must have been, because the state law which entitled the holders to such an exchange might been supposed to have been altogether carried into effect, since not a single of those certificates had been offered for subscription to the loan of the U. S. But as some have been offered since the extension of the loan took place, that circumstance may induce him to alter his opinion, and indeed I cannot well understand how he may suppose himself justifiable in looking upon the whole amount as being actually re-exchanged, whilst he has got it in proof, that some of them are not so. Upon the first impression I should be led to think that the Secretary having once declared (by his allowing the interest not to be suspended) that the whole amount was re-exchanged (and that upon the information of the state officer) will now look upon them in the same light and return them as not assumable, an opinion which I think, may also be supported on different ground both from the nature of the certificates themselves and from the state law of 1789, which declared the state not to be liable for the payment of the principal.

"However as the whole of this reasoning is mostly conjectural, as the decision of the Secretary may, under the present circumstances, lead him to suspend the pay-
ment

ment of interest to the subscribers to the loan (since it was extended at least) unless some legislative measures can prevent that inconvenience, permit me to suggest to you the propriety of procuring as soon as possible the necessary information on that subject, as I have no doubt the House or the committee of ways and means will soon apply to you in an official manner for the same. The questions which appear to me the most necessary to be solved are the following—

“ 1st. What were the grounds of the decision of the Secretary of the Treasury relative to the intended suspension of interest in Feb. 1791, and what construction did he give to the 18th section of the funding Act of Congress?

“ 2d. Does he look now on the New-Loan certificates offered for subscription to the loan of the U. S. as assumable, if so, upon what ground? if not, upon what grounds also? and will he return them soon to the subscribers?

“ 3d. Will his decision relative to the suspension of interest be the same now as last winter, and if it is not, what measures on the side of the Legislature of *Pennsylvania*, will remove the difficulties that may in his opinion now prevent the payment of interest?

“ I have chosen to communicate to you my ideas on that subject as an individual, rather than to wait for the formalities of official application taking place, in order to prevent delays; which I hope will be a sufficient apology for this letter.

With sincere esteem, &c.

ALBERT GALLATIN.”

Philadelphia, Jan. 14, 1793.

A. J. DALLAS, Esq.

“ *Treasury Department, Feb. 8th, 1793.*

“ S I R,

“ IT is regretted that the pressing business of this department has not till this time permitted a reply to the questions stated in Mr. Gallatin's letter of the 14th of January,

January, respecting the New-Loan certificates of the state of *Pennsylvania*.

“ It has been the uniform construction of the Act making provision for the debt of the United States, that to render any certificates receivable on the loan it was not only necessary that they should have been issued for services or supplies towards the prosecution of the late war, but also that they should at the time of being subscribed be recognized by the existing laws of the States as *evidences of debts* by them respectively owing.

“ It was not, till lately understood, that any doubts were entertained whether the New-Loan certificates were in fact debts due by the state of *Pennsylvania* in every sense necessary to bring them within the meaning of the Act of Congress; it is certain, that no such doubts were suggested to the Treasury.

“ The commissioner of loans was accordingly advised in June 1791 that the certificates which had been received of the State in lieu of certificates of the U. S. were receivable on loan, though at the same time he was instructed with a view to future convenience to use his endeavours with the holders to exchange them with the State.

“ In consequence of an explanation which was rendered necessary by the provisions contained in the 18th section of the Act making provision for the debt of the U. S. it appeared that none of the New-Loan certificates of *Pennsylvania* had been subscribed to the loan of the U. S. That only the sum of about forty thousand pounds of said certificates remained to be exchanged, and that adequate and final arrangements had been made for exchanging the remainder by the State.

“ This being the state of the case it became necessary to determine whether the payment of interest on the assumed debt of *Pennsylvania* was to remain suspended until a sum in certificates of the United States, equal to the amount of New-Loan Certificates remaining unexchanged, was surrendered to the Treasury.

“ As the provision in the law was expressly designed to

to prevent interest from being twice paid on what originally constituted one debt ; an event which could not in this case happen ; as it appeared inconsistent with equity, that the state should be required to surrender the certificates which were the sole consideration for which they had become indebted to their citizens when no equivalent had been stipulated therefor by the United States ; as such a surrender would defeat the arrangements made by the state for effecting a re-exchange of the outstanding certificates, and a just settlement with their creditors, as a suspension of the payment of interest on the assumed debt of *Pennsylvania* would prove highly injurious to the rights of individuals ; and lastly, as it appeared to me that the terms and intent of the law could be satisfied without assuming a construction liable to the strong objections before stated, I could not hesitate to determine, that a surrender on the part of the state was not necessary.

“ I have been the more explicit in my reply to the first question proposed by Mr. *Gallatin*, as it appears to be the most important, and for the purpose of evincing that as the case was then presented, no doubt was or could be entertained, that the New-Loan certificates might have been subscribed to the loan of the United States. If however the New-Loan certificates are not by the laws of *Pennsylvania*, considered as *debts*, but merely as receipts for certificates of the United States, which may be demanded at pleasure—then according to the general rule of construction, the New-Loan certificates of the state will not be considered as receivable on loan to the United States, and will be restored to the subscribers.

“ As the engagements of the United States appear to be somewhat implicated in a right decision of this question, I shall take measures to have the case stated to the Attorney-General of the United States for his opinion. At the same time I suggest the expediency of some measures being taken on the part of the government of the state,

state, for expressing their sense respecting the certificates in question.

With great consideration and esteem,

I am, &c.

ALEXANDER HAMILTON."

A. J. DALLAS, Secretary of the
Commonwealth of *Pennsylvania*.

"DEAR SIR,

"IN order to obtain the best information, in answer to your letter of the 14th ultimo, I consulted the Secretary of the Treasury; and I now inclose you a copy of this communication on the subject to which you refer.

"If you think I can be of any further service to your enquiries, I beg you to suggest the points, and to rely on a prompt and chearful attendance. In the mean time, permit me to request, that you will pay particular attention to that part of Mr. *Hamilton's* letter, which invites a declaration of the sentiments of the government, respecting the New-Loan Certificates.

I am, &c.

A. J. DALLAS, *Secretary*."

Secretary's Office,

Philad. 11th Feb. 1793.

ALBERT GALLATIN, *Esq.*

"GENTLEMEN,

"AGREEABLY to the desire of the Committee of Ways and Means, I submit the following state of facts, relative to the redeeming certain abstracts of New-Loan Certificates, as stated in my report to the Honorable Legislature on the 14th January last, and contained in Book A, Article No. 3.

"It having been previously arranged with the Secretary of the Treasury, that the abstracts with receipts assigned to the Commonwealth, should be sufficient to authorise the proper officers of the United States to issue the certificates to be granted thereon, direct to the commonwealth.

monwealth. The subscribing state creditors presented a list, together with the certificates, to the Comptroller-General, who examined and certified their assumable and genuine quality, without describing the kind of debt; on which certificate the officer of loans granted the party a receipt on an abstract, which abstract and receipt were generally presented to this office, and assigned to the commonwealth. An examination with respect to the casting and interest took place, and submitted to the Comptroller for his examination and approbation, when, if approved by him, a certificate to the Governor from his office, was sent to this office, of the amount of the redeemable debt and interest, which was countersigned by the Register, and sent to the Secretary, on which a warrant issued on the Treasury.

“Of the abstracts in question, No. 264-5-6-8, and one in favour of *David Kittenhouse*, Esq. were assigned, and sent from the Comptroller-General to this office, examined and entered as before stated, and returned to the Comptroller-General on the 7th July, and warrants issued the 9th, and were entered in this office on the 10th.

Abstract, No. 262, was sent in the same manner from the Comptroller's office, entered in this the 9th July, and a warrant issued on the 12th, and was entered the 14th in this office.

“Abstract, No. 272, was presented by Mr. *Addison* on the 17th July, which was the first time I knew of any New-Loans being subscribed to the Loan of the United States, and not before. A conference took place between Comptroller and Register, in which it was stated by the Comptroller, that they were within the Act of the United States, and were certainly redeemable. In this I concurred, provided the conditions stipulated by the Act of the United States, could be complied with: This he observed was a matter of the United States, and that he had or would consult the Secretary of the Treasury on the business.

“About this time, I had a conference with the Secretary, Mr. *Dallas*, who informed me that he had heard much

much of this business, and that it was wrong, in which the Attorney-General agreed with him—That he would put the question in writing to him, and transmit official directions for my government.

“In consequence of the communications with Mr. Dallas and the Treasurer, there was a stop put to the business until the Attorney-General’s opinion should be obtained in writing, which the Secretary applied for on the 23d July, and received an answer the 28th, and transmitted the same to this office on the 31st July.

“No payments were made for any abstracts containing New-Loan Certificates, after the communications with the Secretary, Treasurer and Comptroller, save the one in favor of Mr. Addison, No. 272, for 217 dollars and 69 cents.

I have the honor to be, &c.

JOHN DONNALDSON.”

Register-General’s Office,

March 30, 1793.

To the Committee of Ways and Means.

Philadelphia, March 30, 1793.

“SIR,

“THE question which I had the honor of receiving in your letter of the 20th of March instant, is, Whether certain certificates of the commonwealth of *Pennsylvania*, originally issued in lieu of Continental certificates, and lately offered to be subscribed to the Loan in State debt, according to the Act supplementary to the Act, making provision for the debt of the United States, can be legally received upon loan, as contended for by the holders?

“What may be the result of a contest between the holders of those certificates, and the state of *Pennsylvania*, I presume, not to determine—But between the United States and that state I have no great difficulty in deciding—I am of opinion that the Acts of the *Pennsylvania* Assembly of the 27th March, 1789, and of the 30th March, and 1st of April 1790, abolished these

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certificates

certificates as debts of the State, except for the purpose of being re-exchanged for continental certificates, and therefore that the former, as wanting the due recognition from that state, cannot be legally received upon loan.

I have the honor to be, &c.

EDMUND RANDOLPH."

The Secretary of the Treasury.

April 1, 1793.

"SIR,

"I HAVE understood that the committee are this day again to meet on the business upon which I addressed them on the 27th ultimo; if the doubt still exists with the committee, I would propose, that it should be made a question to be argued before the Supreme Court, *Whether the debt in question was redeemable under the Act mentioned?*

"I am so well established in my opinion, that if the decision should be in the negative, I will go as far as to hold myself responsible to the state for the recovery and re-payment of all money paid by the state to the several creditors of that description.

I am with great respect, &c.

JOHN NICHOLSON."

To JOHN SWANWICK, Esq. Chairman }
of the committee on ways and means. }

Register-General's Office, April 3, 1793.

"GENTLEMEN,

"AGREEABLY to your desire, I have re-stated the abstract, No. 262, subscribed and assigned by *John Nicholson*, Esq. from which I have deducted the amount of funded and depreciation debt, included in the former report, as New-Loan, and since corrected.

No. 262,

No. 262.	Principal.	Int. Jan. 92	Int. July, 92	Total.
	47156 29	12842 04	1414 68	61413 01
Deduct the amount of depreciation & funded debt.	1771 71	397 55	35 43	2204 69
	45384 58	12444 49	1379 25	59208 32

I am, with respect, &c.

JOHN DONNALDSON."

To the Committee of Ways and Means.

The business progressed in this manner until the 3d of April, when the committee on ways and means made the following report, viz.

The committee on Ways and Means to whom were referred sundry letters and documents relative to the subscription to the Loan proposed by the United States, and the subsequent redemption of sundry certificates, formerly issued under the authority of *Pennsylvania*, and commonly called New-Loan, report on that subject—

That by a law passed on the 10th day of April 1792, amongst other provision made for the redemption and final discharge of sundry debts due by the commonwealth; in the sixth section, it is enacted, That if Congress shall on or before the first day of July next, renew and again open the subscription to the loan heretofore proposed to the state creditors, or shall in any other manner or upon any other terms, provide for the assumption of the non-subscribed debts owing to such state creditors, the holder or holders of any certificate or certificates, subscribable to the subscription so renewed, or entitled to the benefit of such other provision, shall be entitled to have and receive the nominal value of the said certificate or certificates from the State-Treasurer, upon this condition and not otherwise : that they shall and do subscribe to the loan so renewed, or acquiesce in the terms of such other provision, and thereupon, on or before the first day of July next, transfer to the State-Treasurer, for the use of the commonwealth, each and every the

the certificate and certificates which they shall receive from the United States, in consequence of such subscription, or all and singular the interests and benefits to be derived from such other provision, together with the proper evidences thereof.

That by the arrangements taken in consequence of the law of Congress, extending the terms of their former loan, no certificates could issue in favor of the subscribers, prior to the 1st day of May 1793; whereupon, it having been agreed that the receipts given by the commissioner of loan, to the subscribing state creditors, should be assigned to the commonwealth, and that the certificates from the Loan-office, should issue directly to the commonwealth; the business was conducted under the following regulations: When the holder of any state-certificate or certificates, wished to subscribe the same to the loan proposed by Congress, and to avail himself of the benefit of the above-mentioned law of the commonwealth, passed in April 1792, he presented such certificate or certificates, with an abstract of the same, specifying the number, date, by whom and to whom issued, and the amount of the principal and interest, to the Comptroller-General, who after examination certified on the face of the abstract, that the certificates were genuine and assumable. The abstract being then presented to the commissioner of loan, and the certificates themselves deposited with him, the commissioner gave to the party a receipts for the same on the abstract. The abstract and receipt were then assigned to the commonwealth, and presented to the Register-General and Comptroller-General for examination, and if approved, a certificate signed by the two officers, was sent to the Governor, stating the amount due to the party, and a warrant for the same, thereupon issued according to law.

That amongst other abstracts thus declared to be assumable by the Comptroller, which passed the several offices, and the nominal amount of which (including both principal and interest,) was consequently paid to the respective holders out of the State-Treasury, there
were

were fundry certificates of that description commonly called New-Loan, and which were issued by virtue of an Act, entitled "An Act for the further relief of the public creditors, who are citizens of this state, by receiving on loan certain debts of the United States of America, and for funding the same, and for paying the annual interest of such loans, and the interest of certain debts of this state, every six months," passed on the first day of March 1786; part of which Act was repealed by the Act, entitled "An Act to repeal so much of any Act or Acts of Assembly of this commonwealth, as directs the payment of the New-Loan debt, or the interest thereof, beyond the 1st day of April next, and for other purposes therein mentioned," passed on the 27th day of March 1789, wherein it is enacted that the continental certificates received by the state by virtue of the former Act, shall be returned to the holders of New-Loan certificates, upon their delivering the same, and that "so much of every Act or Acts of General Assembly as directs or secures the payment of the principal sum or sums, in the said certificates or any of them mentioned, or of the interest thereof, beyond the term of four years, shall be, and the same is hereby repealed and made null and void."

That the total amount of the New-Loan certificates thus redeemed by the state, at their nominal value, including the interest, amounts to 63,075 dollars and 37 cents; 60,220 dollars and 41 cents of which, were subscribed in the name, and of course appear to be the property of *John Nicholson*.

The committee are of opinion that the Comptroller-General, in the above-mentioned transactions, has been guilty of a high misdemeanor:—

First. By certifying the assumable quantity of the New-Loan certificates; the greater part of the same being his own property.

Second. By passing and certifying the same to the Executive in the usual forms of office; thereby causing them to be redeemed.

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The opinion of the committee on the first point, is founded upon the following considerations—

1st. They conceive, that since the Act of March 1789, above mentioned, the New-Loan certificates ceased to be a state debt; were not, therefore, within the assumption of, and could not be subscribed to the loan proposed by Congress.

2. Whatever the decision of the officers of the Treasury of the United States might be on the preceding position, as it was not, by law, the official duty of the Comptroller-General to decide on it, he ought not to have done so, when a decision given under the colour of office operated in his own favor, at the expence of the state.

3d. In certifying the New-Loan certificates to be assumable, he neither consulted the Register-General, nor communicated the transaction to the Governor; and as neither the abstracts on the face of which the assumable quantity was certified, nor the official certificates on which warrants were issued, did discriminate the kind of debt that was redeemed; the checks provided by law were thereby destroyed, and the other officers of the state deluded into error.

4th. The Comptroller-General knew, by a former decision of the Secretary of the Treasury of the United States, that at all events the New-Loan certificates could not be recognized as assumable, unless an equal amount of continental certificates was delivered to the Secretary aforesaid; which no law authorised the Comptroller to do: and he was apprised that the payment of the interest to the subscribing state creditors and to the state, on account of the assumption, would have been suspended, when the time limited for receiving subscriptions to the former loan of Congress expired, had it not, upon investigation, appeared that no New-Loan certificates had been subscribed.

The opinion of the committee on the second point, arises from considering that, independent of the question, Whether the New-Loan certificates were within
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the assumption of the United States, they were not redeemable by the Act of April 1792? and this appears from the following considerations—

1st. No funds were provided by the Act for the redemption of these certificates.

2d. The sixth section of the Act can only be regarded as a proviso and exception to the preceding sections by which the redemption of certain descriptions of debts, which do not include the New-Loan certificates, were exclusively and solely contemplated.

3d. Even the sixth section, supposing it to stand alone, cannot admit of the construction given by the Comptroller-General, as it designates only state-creditors, and by the existing laws of the commonwealth, the holders of New-Loan certificates are declared not to be such.

Having stated this general view of the subject, the committee deem it their duty to present the following resolutions to the consideration of the House.

Resolved, That *John Nicholson*, Comptroller-General of this commonwealth, be impeached for a high misdemeanor in his office.

Resolved, That the Attorney-General be directed to institute a suit against the said *John Nicholson*, to recover, for the use of the commonwealth, the amount of the New-Loan certificates, which have been redeemed and paid at the Treasury of this state.

The committee in the course of their enquiries upon this occasion, have found reason to lament, that in the execution of the various, important and confidential duties, (embracing the emission of certificates and the care and management of other public property to an immense amount) which have from time to time been assigned to the Comptroller-General, an adequate check has in few cases been provided, and, in fewer still, enforced. They conceive, therefore, that the honor and interest of the state, require an early and effectual investigation of the Comptroller's official transactions; and they would be wanting in their duty to the public and to themselves, were they not to offer an earnest recommendation

commendation that the following resolution should be adopted.

Resolved, That a committee be appointed to examine, during the recess of the House, all the accounts and official transactions of the Comptroller-General of this commonwealth, and to report thereon at the next session of the Legislature.

A P R I L 4.

A LETTER from Mr. *Nicholson*, was presented to the chair, and read, requesting that an investigation of his conduct may take place during the present session of the Legislature.

A P R I L 5.

AGREEABLY to the order of the day, the report of the committee on ways and means, read the third instant, was read the second time.

The first resolution being under consideration, to wit.

Resolved, That *John Nicholson*, Comptroller-General of this commonwealth, be impeached for a high misdemeanor in his office.

On the question, "*Will the House agree to the same?*"

The yeas and nays being called by Mr. *Gallatin* and Mr. *Torrence*, were as follow, viz.

Y E A S.

- 1 *Jacob Hiltzheimer*,
- 2 *Henry Kammerer*,
- 3 *George Latimer*,
- 4 *John Swanwick*,
- 5 *Thomas Britton*,
- 6 *Thomas Paul*,
- 7 *John Chapman*,

Y E A S.

- 8 *Ralph Stover*,
- 9 *James Bryan*,
- 10 *Dennis Whelen*,
- 11 *Charles Dilworth*,
- 12 *John Hannum*,
- 13 *Samuel Sharp*,
- 14 *Joseph Work*,

Y E A S.

Y E A S.

- 15 Abraham Carpenter,
- 16 John Breckbill,
- 17 John Stewart,
- 18 Alexander Turner,
- 19 Thomas Lilly,
- 20 William M'Pherson,
- 21 Philip Gartner,
- 22 James Power,
- 23 George Cover,
- 24 Runnel Blair,
- 25 Paul Groscof,
- 26 Nicholas Lutz,
- 27 Peter Burkbalter,
- 28 Jacob Eyerly, jun.
- 29 Thomas Hartman,
- 30 Abraham Cable,
- 31 George Woods, jun.
- 32 Samuel Dale,
- 33 John White,
- 34 Christopher Labengeier,

Y E A S.

- 35 Abraham Hendricks,
- 36 Daniel Leet,
- 37 Albert Gallatin,
- 38 Joseph Torrence,
- 39 James Johnston,
- 40 John Rea,
- 41 Isaiah Davis,
- 42 Joseph Tyson,
- 43 Cadwallader Evans,
- 44 John Shoemaker,
- 45 Stacy Potts,
- 46 Jacob Miley,
- 47 Christian King,
- 48 Simon Spalding,
- 49 John Canan, (Hunt.)
- 50 Thomas Morton,
- 51 John Oliver,
- 52 Joseph Gibbons,
- 53 William West.

N A Y S.

- 1 Robert Hare,
- 2 Thomas Forrest,

N A Y S.

- 3 John Lardner,
- 4 Samuel Boyd.

So it was determined in the affirmative.

And the second resolution being under consideration, viz.

2. *Resolved*, That the Attorney-General be directed to institute a suit against the said John Nicholson, to recover for the use of the commonwealth, the amount of the New-Loan certificates, which have been redeemed and paid at the Treasury of this State.

On the question, "*Will the House agree to the same?*"

It was determined in the affirmative.

In the afternoon of the same day the following proceedings are recorded:—

Agreeably to the order of the day, the House resumed

ed the consideration of the report of the committee on Ways and Means, read this forenoon.

And the following resolution being under consideration, viz.

3. *Resolved*, That a committee be appointed to examine, during the recess of the House, all the accounts and official transactions of the Comptroller-General of this commonwealth, and to report thereon at the next session of the Legislature.

A motion was made by Mr. *Evans*, seconded by Mr. *Tyson*,

To postpone the consideration of the said resolution for the present.

On the question, "*Will the House agree to the same?*"

The yeas and nays being called by Mr. *Swanwick* and Mr. *Hannum*, were as follow, viz.

Y E A S.

- 1 *Thomas Lilly*,
- 2 *George Woods, jun.*

N A Y S.

- 1 *Jacob Hiltzheimer*,
- 2 *Benjamin R. Morgan*,
- 3 *Henry Kammerer*,
- 4 *George Latimer*,
- 5 *John Swanwick*,
- 6 *Robert Hare*,
- 7 *Thomas Forrest*,
- 8 *Thomas Britton*,
- 9 *Thomas Paul*,
- 10 *John Lardner*,
- 11 *John Chapman*,
- 12 *James Bryan*,
- 13 *Dennis Whelen*,
- 14 *Charles Dilworth*,
- 15 *John Hannum*,
- 16 *Samuel Sharp*,
- 17 *Samuel Boyd*,
- 18 *Joseph Work*,

Y E A S.

- 3 *Joseph Tyson*,
- 4 *Cadwallader Evans*.

N A Y S.

- 19 *Abraham Carpenter*;
- 20 *John Breckbill*,
- 21 *John Stewart*,
- 22 *Alexander Turner*,
- 23 *William M^cPherson*,
- 24 *Philip Gartner*,
- 25 *James Power*,
- 26 *George Cover*,
- 27 *Paul Groscof*,
- 28 *Nicholas Lutz*,
- 29 *Jacob Eyerly, jun.*
- 30 *Thomas Hartman*,
- 31 *Abraham Cable*,
- 32 *Samuel Dale*,
- 33 *John White*,
- 34 *Christopher Labengeier*
- 35 *Abraham Hendricks*,
- 36 *Thomas Stokely*,

N A Y S.

N A Y S.

- 37 Daniel Leet,
- 38 Albert Gallatin,
- 39 Joseph Torrence,
- 40 James Johnston,
- 41 John Rea,
- 42 Isaiah Davis,
- 43 John Shoemaker,
- 44 Stacy Potts,

N A Y S.

- 45 Jacob Miley,
- 46 Christian King,
- 47 Simon Spalding,
- 48 John Canan, (Hunt.)
- 49 Thomas Morton,
- 50 John Oliver,
- 51 William West.

So it was determined in the negative.

A motion was then made by Mr. Hare, seconded by Mr. Morgan,

To amend the said resolution so as to read as follows, viz.

Resolved, That Commissioners be appointed by law to examine all the official accounts and transactions of the Comptroller-General of this commonwealth, and to report thereon at the next session of the Legislature.

On the question, "*Will the House agree to the same?*"

The yeas and nays being called by Mr. Swanwick and Mr. Eyerly, were as follow, viz.

Y E A S.

- 1 Benjamin R. Morgan,
- 2 Robert Hare,
- 3 Thomas Forrest,
- 4 John Lardner,
- 5 Abraham Carpenter,
- 6 John Breckbill,
- 7 John Stewart,
- 8 Alexander Turner,

Y E A S.

- 9 Thomas Lilly,
- 10 William M'Pherson,
- 11 Philip Gartner,
- 12 George Woods, jun.
- 13 Joseph Tyson,
- 14 Cadwallader Evans,
- 15 John Shoemaker,
- 16 John Canan, (Hunt.)

N A Y S.

- 1 Jacob Hiltzheimer,
- 2 Henry Kammerer,
- 3 George Latimer,
- 4 John Swanwick,
- 5 Thomas Britton,
- 6 Thomas Paul,

N A Y S.

- 7 John Chapman,
- 8 James Bryan,
- 9 Dennis Whelen,
- 10 Charles Dilworth,
- 11 John Hannum,
- 12 Samuel Sharp,

N A Y S.

N A Y S.

- 13 Samuel Boyd,
- 14 Joseph Work,
- 15 James Power,
- 16 George Cover,
- 17 Paul Groscof,
- 18 Nicholas Lutz,
- 19 Jacob Eyerly, jun.
- 20 Thomas Hartman,
- 21 Abraham Cable,
- 22 Samuel Dale,
- 23 John White,
- 24 Christopher Labengeier,
- 25 Abraham Hendricks,

N A Y S.

- 26 Thomas Stokely,
- 27 Daniel Leet,
- 28 Albert Gallatin,
- 29 Joseph Torrence,
- 30 James Johnston,
- 31 John Rea,
- 32 Stacy Potts,
- 33 Jacob Miley,
- 34 Christian King,
- 35 Simon Spalding,
- 36 Thomas Morton,
- 37 John Oliver,
- 38 William West.

So it was determined in the negative.

And the original resolution recurring.

On the question, "*Will the House agree to the same?*"

The yeas and nays being called by Mr. Gallatin and Mr. Swanwick, were as follow, viz.

Y E A S.

- 1 Jacob Hiltzheimer,
- 2 Benjamin R. Morgan,
- 3 Henry Kammerer,
- 4 George Latimer,
- 5 John Swanwick,
- 6 Robert Hare,
- 7 Thomas Forrest,
- 8 Thomas Britton,
- 9 Thomas Paul,
- 10 John Lardner,
- 11 John Chapman,
- 12 James Bryan,
- 13 Dennis Whelen,
- 14 Charles Dilworth,
- 15 John Hannum,
- 16 Samuel Sharp,
- 17 Samuel Boyd,
- 18 Joseph Work,

Y E A S.

- 19 Abraham Carpenter,
- 20 John Breckbill,
- 21 John Stewart,
- 22 Alexander Turner,
- 23 Thomas Lilly,
- 24 William McPherson,
- 25 Philip Gartner,
- 26 James Power,
- 27 George Cover,
- 28 Paul Groscof,
- 29 Nicholas Lutz,
- 30 Jacob Eyerly, jun.
- 31 Thomas Hartman,
- 32 Abraham Cable,
- 33 George Woods, jun.
- 34 Samuel Dale,
- 35 John White,
- 36 Christopher Labengeier,

Y E A S.

Y E A S.

- 37 *Abraham Hendricks,*
- 38 *Thomas Stokely,*
- 39 *Daniel Leet,*
- 40 *Albert Gallatin,*
- 41 *Joseph Torrence,*
- 42 *James Johnston,*
- 43 *John Rea,*
- 44 *Joseph Tyjon,*
- 45 *Cadwallader Evans,*

Y E A S.

- 46 *John Shoemaker,*
- 47 *Stacy Potts,*
- 48 *Jacob Miley,*
- 49 *Christian King,*
- 50 *Simon Spalding,*
- 51 *Thomas Morton,*
- 52 *John Oliver,*
- 53 *William West.*

So it was unanimously determined in the affirmative. Whereupon,

Ordered, That Mr. *Morgan*, Mr. *Gallatin* and Mr. *Evans*, be a committee for the purposes contained in the said third resolution.

It was then, on motion,

Ordered, That Mr. *Swanwick*, Mr. *Morgan*, Mr. *Gallatin*, Mr. *Johnston* and Mr. *Evans*, be a committee to draft articles of impeachment against *John Nicholson*, Comptroller-General, for a high misdemeanor in his office, and to report the same to this House.

On the 6th Mr. *Nicholson* wrote the two following letters—

“ Comptroller-General’s Office, April 6, 1793.

“ S I R,

“ I AM under the necessity of writing to you as Chairman of the Committee on Ways and Means, to request copies of the fundry letters and documents relative to the subscription of the Loan proposed by the United States, and the subsequent redemption of fundry certificates, formerly issued under the authority of Pennsylvania, commonly called New-Loans, on which the report on that subject was founded.

I am, &c.

JOHN NICHOLSON.”

*JOHN SWANWICK, Esq. Chairman
Committee on Ways and Means.*

“ April

“SIR,

“April 6, 1793.

“I HAVE the honor to inclose a copy of a letter addressed to the Chairman of the Committee on Ways and Means, and also a copy of his letter in answer, both of this date. As it is my wish, and should be that of the government, as well for the sake of justice to the public, as to an individual, to have an early investigation of the business therein referred to. Permit me to request I may be furnished with the papers referred to, as soon as possible. If a list is made of what they consist, perhaps I have the most of them already, and I will, myself, to save time, have the remainder copied, under the direction of the Clerk of the House of Representatives, as soon as I am permitted.

I am, with, &c.

JOHN NICHOLSON.”

*Speaker House Representatives
of Pennsylvania.*

On the 8th he wrote the following letters—

“SIR,

“April 8.

“IF I am not obliged by the *favourable* decision, I acknowledge myself so by the *expeditious* one which hath been made of my business in your honorable House, having been gone through in one day.—I have since waited with impatience for the article of impeachment to be reported, this is now the fourth day since it was referred, and it is not yet done.

“I am anxious to have an opportunity of being heard before the Senate, my Judges, that justice may be done both to the public and myself, and am sorry again to mention the same kind of procrastination here, and with the same persons generally, which I lamented in the former report. Permit me to pray for the sake of justice, that this report be called for, which I suppose

pose taking the resolution for their guide cannot be the work of many minutes

I have the honor, &c.

JOHN NICHOLSON."

The SPEAKER of the House of }
Representatives of Pennsylvania. }

" April 8, 1793.

" SIR,

" IT hath been represented to me that in the course of debate, on my business before the House of Representatives—*Albert Gallatin* a member from the county of *Fayette*, hath stated to the House of Representatives, that it would have saved millions to the state, under the pressure of which the good people of *Pennsylvania* will long groan, if a different mode had been pursued by the Legislature in our accounts with the United States, which was lost by mine.

" This is a heavy and important charge, I pledge myself that it is without foundation, and I call upon the House to require a specification of what he refers to, that an enquiry therein may take place and justice be rendered.

I am, &c.

JOHN NICHOLSON."

The Hon. SPEAKER of the House of }
Representatives of Pennsylvania. }

On motion,

Ordered, That the Clerk of this House be directed to present to the Senate a copy of the third resolution contained in the report of the committee on ways and means, and adopted by this House April 5th instant, on the subject of appointing a committee to examine, during the recess of the House, all the accounts and official transactions of the Comptroller-General of this commonwealth, and to report thereon at the next session of the Legislature.

A P R I L

 A P R I L 9.

THE committee reported the first five articles of impeachment, they are omitted here, as they were considerably altered by subsequent revisions, I will give them as they were read before the Senate on the opening of the trial.—The following resolves were reported at the same time, being attached to the articles, to wit.

Resolved, That the foregoing articles of impeachment be engrossed and signed by the Speaker, and that Mr. *Morgan*, Mr. *Swanwick*, Mr. *Gallatin*, Mr. *Johnston* and Mr. *Evans* be a committee to exhibit the same to the Senate, and on the part of the House of Representatives to manage the trial thereof.

Resolved, That the Attorney-General and such other counsel as the managers may think proper, be requested to give their attendance at the trial aforesaid, and assist thereat on behalf of the House of Representatives.

One of Mr. *Nicholson's* letters which had been presented to the Speaker, and laid for consideration, was read a second time, whereupon it was resolved that he should be furnished with copies of the following letters and documents.

“ *Philadelphia*, June 23, 1792.

“ S I R,

“ BY a late Act of the General Assembly of *Pennsylvania*, provision is made, among other things, for paying the nominal amount of the state certificates which are subscribable to the Loan proposed by Congress to the state creditors, “ upon this condition and not otherwise”, that “ the state creditors, subscribe to that loan and thereupon, *on or before the first day of July next* ; transfer to the State-Treasurer for the use of the commonwealth, the certificates which they shall receive from the United States in consequence of such subscription.”

The

“ The Comptroller-General and Register-General of the state, have stated to me that a difficulty occurs in the execution of this Act; as according to their information, the certificates of the United States, for the amount of the respective subscriptions of the state, will not be *issued until the first of March 1793*, and of course cannot be transferred to the State-Treasurer for the use of the commonwealth, at the period which the Legislature of *Pennsylvania* had prescribed, previously to the passing of the Act of Congress that extends the time for subscribing to the Loan.

“ Under these circumstances, I am induced to request, that you will, as far as you can with propriety, enter into an arrangement to accommodate the state; and either direct the certificates to be immediately issued (since there is no reasonable ground to suppose that the subscription in *Pennsylvania* will exceed the amount of the assumption) or give your sanction to a transfer of the receipts which the Loan-officer issues in the first instance to the parties subscribing, so that at the regular period, the certificates may be obtained in the name and for the use of the commonwealth.

“ The readiness which you have shewn on every occasion, to facilitate our fiscal operations, as far as they are connected with the federal establishment, assures me, that no apology is necessary for this application, and increases the sincere respect with which

I am, Sir, &c.

THOMAS MIFFLIN.”

To ALEXANDER HAMILTON, Esq.

Secretary of the Treasury of the U. S.

—
“ *Treasury Department*, June 25, 1792.

“ S I R,

“ I HAD this morning the honor of receiving your letter of the 23d instant.

“ I would with pleasure concur in removing the difficulty you suggest, by anticipating the issuing of certificates for the debt of the commonwealth of *Pennsylvania*,

vania, subscribed to the depending loan, were I not apprehensive of embarrassment in other cases, in which a similar anticipation might be urged on probable ground, but could not be complied with equal safety.

“ But I shall with pleasure co-operate in the alternative which you suggest ; by giving a sanction to a transfer of the receipts which the Loan-officer issues to the parties subscribing, so that after the first day of March next, the certificates to be granted in lieu of those receipts, may issue in the name and for the use of the commonwealth. To this it will be only necessary, that the receipts be lodged with the proper officer of the state, accompanied by competent transfers or assignments, and that notice be given of those which shall have been so deposited, prior to the first of March next.

With very sincere, &c.

ALEXANDER HAMILTON.”

His Excellency THOMAS MIFFLIN, Esq.

“ *Secretary's Office, Philad. 23d July, 1792.*

“ DEAR SIR,

“ THE Governor directs me to request your opinion on the following statement.

“ By an Act of the General Assembly, passed on the first day of March 1786, a loan was proposed, for the relief of the citizens of *Pennsylvania*, to receive certain continental certificates, in exchange for state certificates, then directed to be issued, and usually called New-Loan certificates: By an Act passed the 27th of March 1789, it is declared, “ that so much of every Act or Acts of General Assembly, as directs or secures the payment of the principal sum or sums in the said certificates or any of them mentioned, or of the interest thereof, beyond the term of four years, shall be, and the same is hereby repealed, and made null and void.” And the re-exchange of the New-Loan for continental certificates, was directed and regulated by the same Act, and in subsequent

sequent Acts, passed on the thirtieth of March and first of April 1790: and by an Act of the 10th of April 1792, provision is made for the redemption of certain state debts, and particularly, in the sixth section, for paying the nominal amount of those certificates, which are subscribable to the loan proposed to the state creditors, by the Act of Congress, which was passed on the 4th of April 1790, and extended in it's operation by an Act of Congress passed on the eighth day of May 1792.

"Having considered these laws, the following are submitted to your decision.

"1st. Whether, after the passing of the Act of Assembly of the twenty-seventh of March 1789, and the other Acts on the subject, the New-Loan certificates could be recognized, by the officers of the federal or state government, for any other purpose than re-exchanging them for continental certificates?

"2d. Whether the New-Loan certificates, after the passing of the above Act, by which all Acts securing the payment of either principal or interest thereof, are declared void, can be included within the description of the state debts, directed to be redeemed and paid by the Act of the 10th of April 1792?

"3d. Whether the New-Loan certificates, being issued after the war, and, as the preamble of the Act of the first of March 1786, states, for the relief of the patriotic citizens of *Pennsylvania* are excluded from the loan proposed by Congress, by the words or spirit of the proviso annexed to the 13th section of the Act of Congress of the fourth of August 1790?

"As it is of great importance speedily to ascertain the points here submitted to your consideration, the Governor directs me to request the favor of an early answer.

I am, &c.

A. J. DALLAS, Secretary."

TO JARED INGERSOLL, Esq.

Attorney-General of *Pennsylvania*.

"DEAR

“DEAR SIR,

Philad. July 28, 1792.

“ENGAGEMENTS at court have prevented me from returning an earlier answer to your favour of the 23d instant.

“I am of opinion that after the passing the Act of Assembly of the 27th March, 1789, and the other Acts on the subject, the New-Loan certificates ceased to be a state debt within the view of the Legislature, and could not consistently with those laws, be recognized by the officers of the Federal or State government, for any other purpose than re-exchanging them for continental certificates.

“I am also clearly and decidedly of opinion, that after the passing the above Act, the New-Loan certificates cannot be included within the description of the State debts directed to be redeemed and paid by the Act of the 10th April, 1792.

“The amount of Continental debt assumed by the State of *Pennsylvania*, and for which New-Loan certificates were given was about five millions of dollars.

“Part of this was redeemed by payments made at the Land-office and other payments in the State-Treasury in the New-Loan certificates.

“But the sum remaining of this class of certificates, was much more than the amount of the sum 2,200,000 dollars, which the United States agreed to assume of State debt for *Pennsylvania*.

“The State debt what was originally and properly so called, and which the Legislature could only have had in contemplation when they made provision for such deficiency, as they considered to be left unprovided for by the continental rule of assumption was about one million, or say 1,200,000 dollars.

“Suppose this sum to be, interest included 1,200,000 the United States would give certificates as follows, viz.

At 3 per cent. per annum	-	400,000
Deferred debt	-	266,666 67
At 6 per cent. per annum	-	533,333 33

Dollars 1,200,000

“So

“ So far as 6 per cents extend, the state considered this as a full provision, in satisfaction of the debt. But for the 400,000 dollars, 3 per cent. stock, the state considered it as only payment of one half, they therefore issued other 3 per cent. stock payable by the state to an equal amount, and for the deferred stock on which the United States pay no interest, 'till the year 1801. The state agrees to pay interest annually at 6 per cent. per annum 'till that time.

“ By the Act of April last, the state agrees to redeem these assumptions from the holders of the debt, by paying 10*s* in the pound for the 3 per cents, and £. 39 per cent. for the deferred part, being the estimated value of the annuity of 6 per cent. per annum for the time limited.

“ This recapitulation of facts appears to me to suggest the solution of your second question.

“ If the New-Loan certificates are brought in assumable by the United States, the sum may exceed the whole that Congress have agreed to assume, and our Assembly will have encouraged measures for the exclusion of the whole of our State debt from being assumed.

“ Two motives may be supposed to have actuated our Legislature.

“ First—To free the state from debt that in case of necessity they might anticipate their resources by credit.

“ Secondly—Selling the 3 per cent. stock of the United States at 12*s* and paying off their 3 per cent. stock at 10*s* affords an obvious advantage; in the deferred no less was suffered, and therefore the balance in their favour remained.

“ On the New-Loan certificates they were paying no interest, the continental certificates furnished the means of redemption at any moment, without expense, the reason of the law determines it's extent, neither of those motives apply to the New-Loan certificates, it is impossible that the state could have intended, that they should be assumed by the United States, or that they were in contemplation in the provision made by the Act of April last.

“ To

“ To the third question I am not ready at present to give an answer, it requires some information which I do not possess, but will endeavour to obtain.

I am, &c.

A. J. DALLAS, Esq.

J. INGERSOLL.”

“ S I R,

Treasury Dept. Dec. 21, 1791.

“ I T appearing to me, that the attention of the Legislature of *Pennsylvania* may be necessary to the removal of an inconvenience under which the subscribers of the debt of the state now lie, I do myself the honor to make the requisite communication to your Excellency.

“ The 18th section of the Act, making provision for the debt of the United States, suspends the payment of interest in respect to the debt of any state which shall have issued its own certificates in exchange for those of the United States, until it shall be satisfactorily made to appear, that the certificates issued for that purpose by such states, have been *re-exchanged*, or *redeemed*, or until those which shall not have been re-exchanged or redeemed, shall be surrendered to the United States.

“ It is understood that the measure contemplated in this section, was adopted by the state of *Pennsylvania*; that is, that a sum of state certificates was issued in exchange for an equal sum of certificates of the federal debt, and that although a part of those certificates has been redeemed, others to a considerable amount, have not been re-exchanged or redeemed, it will conduce as well to the order of the finances, as to the convenience of the public creditors, the payment of interest to whom must be otherwise suspended, if measures can be taken by the government of *Pennsylvania*, to make the balance unredeemed and unexchanged to appear, and if they should direct the surrender of the amount of such balance in certificates of federal debt in their old form, should the surrender of them in that form be impracticable from the circumstance of the subscription of federal debt, which was directed by the Legislature, an equal sum, of six per cent. deferred, and three per cent. stock, in such proportions

proportions as the balance or deficiency would produce on subscription, may be paid in lieu of certificates in their old form. This will be at the election of the state, and can be affected by no circumstance but their own convenience, as there can be no pecuniary advantage or disadvantage in either mode. I have, &c.

ALEX. HAMILTON."

His Excellency THOMAS MIFFLIN,
Governor of *Pennsylvania*.

"*Report of the Sales of Stock made for the Redemption of the State Debts, in Pursuance of an Act of the General Assembly of Pennsylvania, passed on the 10th Day of April, 1792.*

<i>The date of sale.</i>	<i>To whom sold.</i>	<i>Kind of stock.</i>	<i>The price,</i>	<i>Amount of each sale. *</i>
1792, May 1st.	John Nicholson, in trust, Isaac Brunson, & Com.	3 per cent.	12/0 $\frac{1}{2}$	46,000
	Griffith Evans,	do.	12/0 $\frac{1}{16}$	20,000
	John Nicholson,	do.	12/0 $\frac{1}{2}$	3,000
	James & William Miller,	do.	12/0	7,000
	Phillip Reilly,	do.	12/0 $\frac{1}{2}$	5,000
	Thomas M. Willing,	do.	do.	10,000
	Isaac Brunson & Com.	do.	do.	10,000
	John Donaldson, A.	do.	do.	20,000
	Ditto and Com.	do.	do.	10,000
	John Donaldson,	do.	do.	30,000
	Joseph Webb,	do.	do.	10,000
	N. G. Phillips,	do.	do.	2,000
	John Lynch,	do.	12/1	20,000
	Robert Morris,	do.	do.	10,000
	George Eddy,	do.	12/0 $\frac{1}{2}$	200,000
	George Meade,	do.	12/1	30,000
	Isaac Brunson & Com.	do.	do.	15,000
	James Crawford,	do.	12/0 $\frac{1}{2}$	20,000
	John Nicholson,	do.	do.	10,000
	Le Roy & Bayard,	do.	12/0	6,000
	Walter Stewart,	do.	12/0 $\frac{1}{2}$	159,000
	Thomas M. Willing,	do.	do.	30,000
	Robert Morris,	do.	do.	5,000
	John Nicholson,	do.	12/0	250,000
	William Bingham,	do.	do.	6,000
	John Donaldson,	do.	12/0 $\frac{1}{2}$	6,000
	Walter Stewart,	do.	12/0	6,000
	Clement Biddle,	do.	12/0 $\frac{1}{2}$	20,000
		do.	do.	20,000

Dols. 986,000

With

“ With the proceeds of the above sales of stock, the amount respectively in the following debts have been redeemed, the particulars of which redemption is set forth in the report of the Register-General.

<i>Funded debt.</i>	<i>Funded Depreciation debt.</i>	<i>State 3 per cts. purpart certificates.</i>	<i>State 6 per cts. purpart certificates.</i>	<i>Debts subscribed to the United States and transferred to Pennsylvania.</i>
£. s. d.	£. s. d.	Dols. Cts.	Dols. Cts.	Dols. Cts.
26,909 15 0	8,022 1 4 $\frac{3}{4}$	130,439 76	66,325 14	120,080 15

“ In the amount of the debts subscribed to the United States and transferred to *Pennsylvania*, is included a sum of _____ in the New-Loan certificates of this state; which according to the opinion of the Attorney-General, were not contemplated by the Legislature as objects of redemption in the mode prescribed by Act of the 10th of April, 1792; and the particular statement of which is therefore subjoined.

“ An account of New-Loan certificates subscribed to the loan of the United States, transferred to and paid by the state of Pennsylvania.

<i>Names of the subscribers.</i>	<i>Amount of interest up to January 1st 1792.</i>	<i>Amount of interest up to July 1st, 1792.</i>	<i>Amount of Principal.</i>	<i>Total amount of principal & interest.</i>
262 John Nicholson,	842 04	1,414 68	47,156 29	61,413 01
268 Ditto,	437 83	16 72	557 54	1,012 09
272 Alexander Addifon,	88 80	3 77	125 12	217 69
266 David Rittenhouse,	23 03	3 84	128	154 87
266 Joseph Honeycomb,	17 90	4 13	137 74	159 77
265 James Duncan,	185 73	15 55	518 67	719 95
264 Jonathan Mifflin,	340 61	36 75	1,225 32	1,602 68
	13,935 94	1,495 44	49,848 68	65,280 06

“ Subscribed

“Subscribed as above said, but not paid.

282 Thomas Hale,	37 32	2 77	92 50	132 59
277 Ditto,	161 67	12 07	402 50	576 24
279 William Porter,	104 44	7 84	261 45	373 73
276 George Booth,	50 22	4 48	149 50	204 20
	353 65	27 16	905 95	1,287 76

THOMAS MIFFLIN.”

Tuesday, 4th December, 1792.

Together with a Report of the Register-General to the Legislature, Book A, which contains the different species of public debt, which had been redeemed by the state, and for whom.

Although the House had passed the resolution that Mr. *Nicholson* should be furnished with copies of the foregoing letters and documents, from page 96, inclusively, he was nevertheless neglected, and had been under the necessity of renewing his application on the 25th February 1794, as I will shew in its proper place.

The Clerk of the Senate being introduced, presented to the chair, an extract from the Journal of that House; and having withdrawn, the same was read, as follows, viz.

“In SENATE, TUESDAY, *April 9, 1793.*

“Mr. *Hoge* called for the resolution of the House of Representatives respecting the adjournment of the Legislature, read yesterday; whereupon the same was again read, as follows, viz.

“In the HOUSE OF REPRESENTATIVES,
Monday, April 8, 1794, A. M.

“Resolved, That the Legislature will adjourn on Thursday the 11th day of April instant, to meet again on the fourth Tuesday in August next.”

“After debate,

“It was moved by Mr. *Hoge*, seconded by Mr. *Morris*,

“That the word “*adjourn*” be struck out, and the
O word

word "*rise*" be inserted in place thereof, and that from the word "*instant*" to the end of the resolution be struck out, and the words "*sine die*" be inserted in place thereof.

The question on the amendment being put, was carried in the affirmative.

The resolution as amended was agreed to.

Extract from the Journal,

T. MATLACK,

Clerk of the Senate."

Mr. *John Oldden* appeared agreeable to summons for that purpose served on him, and being duly affirmed, answered some interrogatories, and had liberty to withdraw.

He attended the same afternoon, and had been requested to give his attendance the next day for the same purpose.

A P R I L 10.

THE same witness attended again, answered certain interrogatories, and was finally discharged.

The Articles of Impeachment were read the second time.

The Clerk of the Senate being introduced, presented to the chair, an extract from the Journal of that House; and having withdrawn, the same was read, as follows, viz.

"In SENATE, WEDNESDAY, *April* 10, 1793.

"On motion, and by special order, the Resolution of the House of Representatives respecting the adjournment of the Legislature, this day presented by the Clerk of the House of Representatives, was again read;

"Whereupon, it was

Moved by Mr. *Smilie*, seconded by Mr. *Hanna*, and

"Resolved, That the Senate recede from their amendments on the said resolution, and concur the resolution as sent from the House of Representatives, to wit—

"Resolved, That the Legislature will adjourn on Thursday

day the 11th day of April instant, to meet again on the fourth Tuesday in August next.

Extract from the Journal,

T. MATLACK,

Clerk of the Senate."

A motion was made by Mr. *Hare*, seconded by Mr. *Lardner*, to postpone the consideration of the Articles of Impeachment, to introduce the following resolutions in lieu thereof, viz.

Resolved, That this House does not confide in the administration of *John Nicholson*, Comptroller-General of this commonwealth.

Resolved, That the Governor be requested to remove *John Nicholson* from the office of Comptroller-General of this commonwealth, and that this resolution be sent to the Senate for their concurrence.

Mr. *Gallatin* observed on this question, that he would have moved for the removal of Mr. *Nicholson* before that time, were it not for the existing settlement of accounts between the United States and the individual states, that he well knew that there was no man in the commonwealth so capable of doing that business as Mr. *Nicholson*; therefore he would vote against the above resolutions. After which the question for postponement was put, and determined in the negative.

The articles then recurring, after sundry alterations and amendments, they were adopted, and it was ordered, that they should be engrossed for a third reading.

A P R I L 11.

THE articles being engrossed, were read the third time, signed by the Speaker, and sent by five gentlemen to the Senate.

"In SENATE, *April 11*, 1793.

"The committee being introduced, Mr. *Gallatin* said;

"Mr.

“ Mr. SPEAKER,

“ The managers, duly appointed, do, by the direction, and in the name of the House of Representatives of the General Assembly ; and of all the People of *Pennsylvania*, impeach *John Nicholson*, the Comptroller-General of this commonwealth, for high misdemeanors in his office, the specification whereof is contained in the accusation and articles which we now present, and which the House of Representatives are ready to prove and maintain, at such time as the Senate shall appoint.

“ Whereupon,

“ The committee presented the articles of accusation and impeachment, and the same were read, &c.”

Mr. Nicholson sent the following letters to the Senate and House of Representatives the same day—

“ S I R,

April 11th, 1793.

“ I WAS much pleased yesterday with the latter part of the report of the committee on the articles of my impeachment, wherein it is stated that the House of Representatives are ready to proceed in the premises, when the Senate shall appoint ; but afterwards felt differently when I heard that before the articles were presented to the Senate, they had concurred in the Resolution of the House of Representatives to adjourn on this day.

“ I have applied to that House to be heard, and pray that the House of Representatives may wait a few days before they adjourn, that an opportunity may be given for an immediate investigation of this business.

I am, &c.

JOHN NICHOLSON.”

The Hon. the SPEAKER of the House of Representatives of *Pennsylvania*.

“ S I R,

April 11, 1793.

“ ARTICLES of impeachment against me have been prepared and agreed to in the House of Representatives yesterday, in which they say, they are ready to proceed in the business, when your honorable House may appoint ;

point; I am also ready, and pray that the Senate may rescind their vote for adjournment this day, and that this business may be taken up and investigated.

I have the honor to be, &c.

JOHN NICHOLSON."

The Honorable the SPEAKER of the
Senate of *Pennsylvania*.

"SIR,

April 11th, 1793.

"IF it be not improper I would beg leave to solicit the attention of the honorable House to my letter of the 8th instant requesting a specification from Mr. *Gallatin* of his assertion respecting my official conduct in the business of our accounts with the United States. I am, with great respect,

Your most obedient servant,

JOHN NICHOLSON."

The Honorable the SPEAKER of the
House of Representatives.

One entry in the minutes of this day, and another of the eighth, respecting Mr. *Nicholson's* letters, are worthy of observation. It is customary for letters and documents, presented to the Speaker, to be noted on the minutes, so as to inform the reader of the purport and contents of such letters or documents, but in the instances here alluded to, no intimation is given of their contents, purport, request or any of the usual formalities, but, "*A letter from John Nicholson was read, and ordered to lie on the table.*"

A motion was made by Mr. *Gallatin*, seconded by Mr. *Evans*, and agreed to, That the committee appointed the 5th to examine the accounts and official transactions of the Comptroller-General, or any member of the said committee that shall have power to examine, at all seasonable hours, all the books, accounts, vouchers, certificates and official documents whatsoever, which may be in the custody of either the Comptroller-General, Register-General or the State-Treasurer, to take
copies

copies of the same, or any part thereof, and to require any explanations concerning the same.

That the said committee, or a majority of them, shall have power to send for persons and papers, and to summon any person or persons before them, for the purpose of giving testimony upon oath or affirmation, on the subject of the enquiries of the said committee.

That the said committee shall have power to employ such clerks to assist them, as they shall think necessary.

The committee of accounts reported eight hundred dollars in favor of the Chairman, Mr. *Morgan*, on account of the expences attending the investigation of the official transactions of the Comptroller-General during the recess, he to be accountable.

Messrs. *Swanwick* and *Gallatin* were appointed to inform the Senate that the House of Representatives were ready to close the present session. After Mr. *Swanwick* had reported his performance of that service, he observed, that the impeachment against the Comptroller was of very great importance, and that probably some of the committee might fall sick, and thereby the business of the investigation might be retarded; he therefore moved that another member might be added to the committee; this motion, not being seconded, was lost.

Adjourned to the 27th August following.

AUGUST 27, 1793.

THE Legislature met pursuant to adjournment.

AUGUST, 29.

THE committee appointed for the purpose, April 5th last, reported additional articles of impeachment against *John Nicholson*, Comptroller-General of the commonwealth of *Pennsylvania*, which were read;

Whereupon,

Whereupon, on motion,

Ordered, That Tuesday next, the 3d of September, be assigned for the second reading of the said articles, that they be the order for that day, and that a sufficient number of copies be printed in the mean time, for the use of the members.

It was then, on motion,

Resolved, That the Speaker issue his summons, commanding the attendance of *Blair M'Clenachan*, and *Matthew M'Connell*, to appear at the bar of the House on Tuesday next, to give testimony on the subject of the articles of impeachment against *John Nicholson*, Comptroller-General of this commonwealth.

The summons were accordingly issued.

SEPTEMBER 2

THE committee appointed to examine, during the recess of the House, all the accounts and official transactions of the Comptroller-General, made report in part; which was read,

Whereupon, on motion,

Ordered, That a sufficient number of copies be printed for the use of the members, and that it be annexed as an appendix to the Journal of this House.

It may be proper to observe, that the reading was dispensed with, and the Report sent to the printers, where it remained for a considerable time, say 2 months at least, before it was finished. It is as follows, together with Mr. *Nicholson's* answer to the objectionable parts. Read in the House of Representatives January 9, 1794—and ordered to lie on the table, as usual.

“*Comptroller-General's Office*, Jan. 8, 1794.

“SIR,

“THE late House of Representatives of the commonwealth of *Pennsylvania* appointed a committee of their body,

body, on the 5th day of April 1793, to examine the accounts and official transactions of the Comptroller-General. That committee proceeded to business by instituting, as I was informed a kind of inquisition; in which privately or without my knowledge, they sent for and examined *ex parte*, such persons as by reports or otherwise, they supposed might be able to testify something against me, and to this every one who had ought to say against the Comptroller-General, were invited to come and cast in their mite; my office was also opened to them and all the books and papers exhibited and exposed to their scrutiny. About the beginning of September following, they reported the result of their labors and enquiries to the late House; their reports consisted, 1st of two additional articles of impeachment, to which I shall have an opportunity to answer in a proper place, and it would be improper to say any thing of their merits here.

“And 2d of a voluminous statement on the business of their appointment, which was ordered to be printed, and which is annexed as an appendix to the Journals of the last House; this paper having been brought before the present House, and referred to a special committee, and being in many parts of such a nature as to require my answer, I sit down to make some remarks thereon, accompanied with documents to support the leading facts, that so you may have the matter more fully before you.

“I believe it will be fair, considering the circumstances and appointment of the said committee of the late House, at least to infer in my favour, in all parts of my official conduct where they have not otherwise reported; if therefore I shall remove prejudices where they are therein attempted to be raised, or establish facts to be the reverse of what they assert; I shall in all other parts of my official conduct (except what is still pending before the Senate) have profited by my fiery ordeal.

Committee's report.

“THAT from an examination of the powers vested in, and the duties enjoined on the Comptroller-General, by
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the laws of the commonwealth, they were led to arrange the objects of the investigation committed to their care, under the following heads, to wit.

“First. New-Loan certificates issued or received by the Comptroller, and Continental certificates or interest arising upon the same, received by him.

“Second. Settlement of accounts, and paying the depreciation of the pay of the army.

“Third. Settlement of accounts of persons having claims against the commonwealth, and issuing certificates for the same commonly called “Funded debt.”

“Fourth. Settlement of accounts of persons indebted to the commonwealth, and recovering balances due by them.

“ F I R S T H E A D .

“BY the Act of Assembly, of the 1st of March 1786, it was provided, that a competent number of blank certificates should be prepared and signed by the State-Treasurer, and by him delivered to the Comptroller-General to be filled up, numbered, registered and countersigned. That the said Comptroller-General, should receive on loan on behalf of the state, certain certificates of the debts of the United States, in the Act described (*a*)

(*a*) By the Act of the 28th March 1787, some other descriptions of certificates were admitted on loan.

—and should issue and deliver in lieu thereof, to the persons making such loans, certificates to the amount of the principal of the certificates loaned; that he should keep regular registries respectively of the certificates thus received on loan and of those issued to the loaners—the said registries and certificates to be subject to the examination of the Supreme Executive Council—that the Treasurer should pay interest on the certificates thus issued half yearly—that the Comptroller should receive from the United States, the interest accruing or due on the certificates received on loan—should note every such payment, whether made in money or in certificates, on the proper registry and pay

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the same to the Treasurer, to be paid by him to the United States, on account of the State. (b).

(b) A part of the requisitions of Congress was payable in those indents or facilities issued by the United States in payment of the interest of their domestic debt.

“By the Act of the 27th March 1789, so much of the preceding Act, as secured the payment of the principal of the certificates thus issued, and commonly called New-Loan, or of the interest thereof, beyond the term of four years was repealed, and it was further enacted, that the certificates of the United States, received on loan by the state, or others of the same amount, should be returned to the holders of New-Loan certificates, applying for the same at the Comptroller's office; and that the exchange should take place under such regulations as Council should direct, provided that no certificates of the United States should be delivered to the parties, until the overplus of interest, if any, paid by the state, upon the New-Loan certificates returned by the parties, beyond the interest received from the United States by the State upon the continental certificates applied for should have been paid in indents to the Comptroller. (c).

(c) It was also enacted, that if on the other hand a balance of interest appeared due to the parties, the Comptroller should pay it in indents—By an Act of the 30th of September 1791, the Comptroller was authorized to receive, or to make payment as the case might be of such balance in 3 per cent. stock of the United States.

“A copy of the regulations of Council is hereunto annexed by which it appears, that the Comptroller was authorized to give the holders of the New-Loan certificates, either the original Continental certificate, corresponding to the New-Loan presented, or a like sum in Continental certificates, either of those received on loan or redeemed by the Land-office, and in cases where the exact amount could not be made, to issue for the balance a new certificate; that he was directed to keep in a set of proper books, accounts of all certificates received, delivered or issued, with their No., principal sums and dates of interest, and also of all indents, received
or

or paid; (and if he considered it necessary for his own security, or for the regularity of his proceedings,) to demand receipts from all persons to whom certificates or indents were delivered.

“By an Act of the 1st of April 1784, the Receiver-General of the Land-office, was directed to deliver, at the time of settling his accounts, to the Comptroller-General, all certificates by him received, (entering on each certificate, the time of his receiving the same, and the interest due at such time.) By the same Act, the certificates which the said Receiver-General was authorised to receive in payment for lands are described, amongst which the Continental certificates of certain descriptions are enumerated. By the Act of the 1st of March 1786, the New Loan certificates were also made receivable in the Land-office, which provision was repealed by the Act of the 27th March 1789, and the Continental certificates, were likewise declared to be no longer receivable, by an Act of the 27th of November 1789.

“By the Act of the 1st of April 1790, the Comptroller was directed to deliver to the Treasurer all the Continental certificates, and all indents the property of this state, after the same had been examined by himself, the said Treasurer and the Register-General, in presence of two members of Council, and to cancel and deliver to the Register-General, after a similar examination, all the certificates, issued by the state, and received by the Comptroller-General for the use of the state, (*d*)

(*d*) The same Act repealed a provision made by the Act of the 30th of September 1789, whereby all accounts of exchange of New-Loan and Continental certificates, were to be submitted to the Register-General. It does not appear that that clause, which was but six months in force, was ever carried into operation. 1.

Mr. Nicholson's Answer.

1. “The fact is otherwise as may be testified by the books thereof kept by the Register-General until the repeal as aforesaid took place.”

Report continued.

—The provision which rendered the presence of two members

members of Council necessary in the examination of either kind of certificates, was repealed by an Act of the 30th of March 1791, and the provision which rendered the presence of the Treasurer necessary, in the examination of the certificates directed to be cancelled and delivered to the Register-General, was repealed by an Act of the 4th of April 1792.

“The committee examined the transactions of the Comptroller-General, in pursuance of the above-mentioned laws, in the following order—

“1. Receiving Continental certificates on loan, and issuing New-Loan certificates. Two sets of books were opened for that purpose by the Comptroller. The first of certificates received on loan, contains in distinct columns the No. of the certificate received from No. 3443 to 21,331, which No. is not the original one of such certificate, but put upon it by the Comptroller at the time of receiving the same. 2d. The No. of the New-Loan certificate issued in exchange. 3d. The sum in dollars Continental money, when the principal of the certificate loaned was expressed in that currency. 4th. The rate of depreciation, at which such sums in Continental money were to be calculated. 5th. The sum in dollars specie. 6th. The date of interest commencing.

“The second of New-Loan certificates issued, contain also in separate columns the No. of the certificate from No. 1 to 19,281, the name of the grantee, the sum in pounds, shillings and pence, distinguishing the original from the renewed certificates, the date of interest commencing, and the number of years, interest paid by the state upon each certificate.

“Separate books were kept for the New-Loan certificates issued in exchange for certain Continental certificates, dated between the 1st day of September, 1777, and the 1st day of March, 1778, which were subject to a depreciation whenever redeemed, although the interest till that period, was to be paid upon the nominal amount. The numbers of these are from No. 1 to No. 436. A committee of Council examined those books,
and

and the Continental certificates deposited with the Comptroller. They discovered and rectified several errors, 2

Mr. Nicholson's Answer.

2“ When it is considered that in the short space of time allowed to do it in, I had by myself alone without being even allowed the assistance of a clerk to check my calculations, to receive the applications and certificates from the holders of such a number as together amounted to upwards of 5 million dollars and a sixth : To reduce many of those to specie, by a difficult table which progressed daily in its depreciation ; to convert the sums respectively from dollars to pounds ; to file them regularly, to draw other certificates for the like amount, in many cases to consolidate and ascertain the average, or mean time of interest on the respective certificates, and insert the same, and to deliver to the parties the respective certificates of state debt. I say when this business is considered, it will not be wondered that some mistakes and errors should have been committed ; for my own part, on reflection, I wonder they were so inconsiderable in their amount. In transacting this business, every individual was his own advocate, to see that he had the amount to which he was entitled ; whereas there was not the same motives of interest to discover mistakes made the other way. It is to be remembered that whatever these mistakes amount to, I have rectified them with the state at my own expence, and so far as I cannot rectify them with the individuals, as well as in one case where the Continental certificates themselves, were either mislaid or stolen, I sustain the loss myself.”

Report continued.

—and it appears from their report, that the total nominal amount of continental certificates dated between the 1st day of September, 1777, and the 1st day of March, 1778, received upon loan, was 735,700 dollars, and the amount reduced to specie of all other continental certificates, was 4,437,181 $\frac{5}{8}$ dollars, making altogether 5,172,881 $\frac{5}{8}$ dollars, that the total amount of original New Loan certificates issued in exchange for continental certificates

ificates of the first description, was £. 275,887 : 10, and the total amount of all other original New-Loan certificates, was £. 1,661,998 : 5 : 3, (f)

(f) A mistake of £. 60 has been discovered in that sum, so that the amount is £. 1,662,058 : 5 : 3—equal to dollars 4,432,155 $\frac{33}{100}$. That sum is by dollars 5026 $\frac{17}{100}$ less than the amount of continental certificates received, which arises, as the committee were informed by the Comptroller, from sundry continental certificates being included in those books, which were received by the Comptroller for the use of the state; but not upon loan. The list is not yet furnished, but the principal amount arises from certificates for part of the commutation of pay, granted by Congress, to sundry officers who relinquished them to the state.

—making altogether

£. 1,937,885 : 15 : 3.

“ Two enquiries might be necessary on the preceding transactions—First, *Whether no continental certificates were received on loan, except such as were admissible by law?* As almost the total amount of those certificates have been returned to the parties, or subscribed to the loan of the United States, it is not possible at present to investigate that point; but as the committee of Council examined all those certificates, it amounts nearly to a proof that they were within the description authorised by law to be received.—Second, *Whether no New-Loan certificates have been issued, except for the continental certificates received on loan?* From the examination of the committee of Council, it is known that the registry of certificates corresponded with the certificates themselves that were received on loan, therefore by comparing the New-Loan certificates, cancelled and delivered to the Register-General, with the registry of certificates issued, it will be easy to see whether they agree; should there appear any certificates which are not entered in the registry, the Comptroller must be accountable for them; but as the delivery of those certificates has but just now been completed, it is necessary in order to have complete satisfaction on that head, to wait until the Register-General shall have arranged them in numerical order.

“ It has been mentioned that there is in the registry of New-Loan certificates issued, a column of certificates

ates renewed. It appears that those of that description, issued in exchange for continental certificates, dated between the 1st of September, 1777, and the 1st of March, 1778, amount to £. 18,314 : 8 : 9; and all others of the same description to £. 458,917 : 6 : 5 (g)

(g) There is an auxiliary book of New-Loan certificates, issued upon renewals, showing the numbers of the original certificate or certificates delivered to the Comptroller; and of the renewed certificate or certificates granted therefor; the name of the grantee; the amount of the principal of the certificate, and the number of years of interest paid thereon, at the time of making the renewal. By that book it should appear, that the number of renewed certificates, issued for continental certificates, other than those dated between the 1st day of September, 1777, and the 1st day of March, 1778, was £. 460,035 : 7 : 2; this amount is the one adopted by the committee, as the certificates themselves to that amount have been delivered to the Register. The difference is £. 1,118 : 0 : 9.

amounting altogether to £. 477,231 : 15 : 2. That custom, which extended to all the different descriptions of certificates, though publicly known, does not appear to have been authorised by law. The reasons alledged to justify it, are, that the interest of the state was promoted thereby, inasmuch as it facilitated the payments in the Land-Office; and that it accommodated individuals very much, not only on account of such payments, but also in order to enable original or other holders, who were obliged to sell a part of their certificates, to dispose of only a part, and to keep what they did not wish to sell. It produced, however, at last, one very great disadvantage, which was taking up too great a proportion of the time of an officer, whose duties were, perhaps, already too numerous. At all events it would have been better to have applied to the Legislature, in order to receive their sanction. It must also be observed, that that practice had taken place in some instances, before the appointment of the Comptroller; the Auditors appointed to settle the accounts, and issue the certificates for the depreciation of pay, having renewed some of the certificates they had granted.

“ II. Re-exchanging the continental certificates received on loan for the New-Loan certificates.

“ Two

“ Two sets of books were also opened for that purpose, by the Comptroller ; one of New-loan certificates received on exchange, the other of continental certificates returned to the parties.

“ In order fully to understand how they were kept, it is necessary first to know in what manner the exchange was proceeded upon. An account of the New-Loan certificates he offered to be exchanged, was prepared, including the numbers of the same, and names of the grantees ; the principal sum of each certificate, the number of years, interest paid by the state, and the date from which each began to bear interest, together with the amount of interest, either due on the face of the certificates upon the 31st day of December, 1787, or paid by the state beyond the same date. To those calculations were added, on the same account, the numbers and amount of the continental certificates returned by him in exchange, together with the date of interest commencing, and the amount of interest due on each, respectively, on the 31st day of December, 1787. This last amount, together with the amount of interest paid by the state, upon the New-Loan certificates offered to be exchanged beyond the 31st day of December, 1787, was charged to the party applying for the exchange ; and the amount of interest due on the face of the New-Loan certificate thus offered for exchange on the said 31st day of December, 1787, was carried to the credit of the said party ; and the difference between the two amounts, was the sum to be paid in indents, or 3 per cent. stock, either by, or to the party, in order to equalize the interest. All the accounts were numbered and filed ; at the same time were entered, in distinct columns, in the book of continental certificates returned, the number of continental certificates returned to, and of New-Loan certificates received from each party ; the amount of principal in specie dollars of the continental certificates : the date of interest commencing on each ; the amount of interest due on each on the 31st day of December, 1787 ; and the amount of
indents

indents or 3 per cent. stock, paid to or by the parties, respectively. In the last column of each entry, the number of the account presented was inserted, and the party signed his name, acknowledging the receipt or payment of indents.

In the book of New-Loan certificates received on exchange, which was filed afterwards by the help of the numbered accounts, were entered the number of each certificate received; the names of the grantees; the sums of principal of each certificate; the years of interest paid by the state as endorsed on the back of each certificate; the date at which interest commenced on the face of each certificate; and the amount of interest either due on the certificate on the 31st of December, 1787, or overpaid by the state beyond the same date. In distinct columns were entered the numbers and amount of the New-Loan certificates, called *Surplus Certificates*, which were at first issued by virtue of the resolutions of Council above-mentioned, in those cases where the exact amount of the New-Loan offered for exchange, could not be paid in Continental certificates. After the public offices of the United States had been removed to *Philadelphia*, that mode was no longer pursued, but the difference which might be due to the parties, was, by the Comptroller, assigned to them in 6 per cent. and deferred stock, or registered debt upon the books of the Treasury of the United States. It is also proper here to observe, that although the above-described mode of exchange was the common one, yet in some instances it was not followed, but the Comptroller assigned on the said books of the Treasury, to the parties, an amount of 6 per cent. deferred, and 3 per cent. stock, equal to the amount of New-Loans offered by them for exchange. Whether this was done by the Comptroller's going and subscribing himself for the parties, the Continental certificates due to them, or whether he had previously subscribed for that purpose a number of Continental certificates deposited with him, your committee cannot pretend positively to decide. If the last, however conven-

nient it might be, it was altogether unauthorised, either by law, or by any resolutions of Council that have come to the knowledge of the committee. The books of Continental certificates delivered so far as they are receipted, are a complete proof of their being delivered, and at all events, that transaction will be checked by the examination of the New-Loan certificates delivered to the Register.

III. Receiving Continental and New-Loan certificates for the use of the state.

The bulk of those certificates were received from the Receiver-General of the Land-Office, and sets of books were opened by the Comptroller, formed from the accounts delivered by the Receiver-General, containing the principal sums of the certificates, the date to which interest had been paid upon each certificate, and the interest calculated upon each from that date to the 1st of January, 1791. The amount of the New-Loan certificates thus redeemed, is £.118,470:6:6 (*b*).

(*b*) Those books do not contain the numbers of the certificates; but so far as relates to the New-Loan certificates there is another auxiliary book containing the numbers of the certificates; the names of the grantees, the amount of principal, and the number of years; of interest paid at the time the Comptroller received the certificates. That book was formed by the Comptroller, from the certificates themselves; but as the amount of those books, to wit, £.118,179:10:6, did not agree with the amount of the other book, the committee adopted the result of this, it being checked by the Receiver-General's accounts, and having been compared therewith by the Register-General.

The amount of Continental certificates is, £.328,924:6:3. The calculations of interest are designed (by being checked by similar calculations made by the Register upon the certificates as delivered by the Comptroller) to show that no interest was drawn upon the same by the Comptroller since he received the certificates. The same has been done in regard to certificates of all descriptions whatever, received by the Comptroller. In addition to the foregoing certificates, the Comptroller must be charged with the Continental certificates mentioned in the note (*f*); with one in the name of

Scott,

Scott, and one in the name of Thompson, as mentioned by preceding reports of the Comptroller; and with another one of $5782\frac{2}{3}$ dollars, received of Wade, in payment of a debt, and subscribed to the loan of the United States. He must likewise be charged with a New-Loan certificate, received of George Woods, as mentioned in former reports; and one of £. equal to $533\frac{7}{8}$ dollars, received in balance of account from Atlee.

“ The annexed accounts marked A, B, C, D, E, F, will fully explain the accounts of the Comptroller, as to this first head.

“ The account A, is introductory to the others, and exhibits the general account of the New-Loan debt. By that account it appears that the amount of New-Loan certificates yet in circulation, is £. 33,722 : 3, which amount includes those offered for subscription to the loan of the United States. The Comptroller has prepared from his books a list of the identical certificates thus outstanding; but it is not perfectly checked; as soon as the Register-General shall have arranged the certificates delivered to him in numerical order, he will be able to form an accurate list of the same.

“ The Comptroller should have in his possession an amount of Continental certificates equal to that balance of New-Loan outstanding. From the examination made by the committee of the certificates of that description in his possession, it appears that he has only $81,384\frac{1}{2}$ dollars, equal to £. 30,519 : 0 : 11, leaving a deficiency of £. 3,203 : 2 : 1, equal to $8,541\frac{1}{2}$ dollars, for which he must account. The same result will appear from the account of the Comptroller with the Continental certificates received upon loan, marked C, and from his account with the Continental certificates received for the state, marked D, it appears that he is indebted for a balance of $3,914\frac{4}{5}$ dollars; these two balances together make a sum of $12,456\frac{2}{5}$ dollars; 3.

Mr. Nicholson's Answer.

3. “ That there will be some balance deficient, I am certain,

certain, for the same reasons mentioned in page 117 and; that the errors committed in re-exchanging, may perhaps exceed those committed in the first loaning is also possible, inasmuch as the business was more complex and difficult; however I hope for my own interest, that on settlement of these accounts, it will be found the committee were mistaken in the amount. Whenever that settlement shall have been completed, as the committee in the 20th line of this page require, whatever balance may remain, shall "*be replaced by the Comptroller immediately.*"

Report continued.

—and although it may happen from some mistakes, that each of the two separate balances be wrong, yet the aggregate must be right, unless either the sum of Continental certificates received on loan, as returned by the committee of Council, or the sum of New-Loan certificates delivered to the Register as returned by the Comptroller, be wrong. That sum should be replaced by the Comptroller immediately.

"The account B, which is the Comptroller's account, with New-Loan certificates received by him, requires no observation, except that the whole amount of the certificates of that description delivered by him to the Register, except only a sum of £. were so delivered since the appointment of the *committee*. 4

Mr. Nicholson's Answer.

4. "This might give the thing an appearance that such an appointment was necessary to hasten their delivery; the fact was, that pending the examining and advocating the accounts of *Pennsylvania*, under adjustment with the Union, every other business that could be suspended, was put off; this was of that class, and delayed until it was done after the committee's appointment and for that reason."

Report continued.

—But in order more fully to understand the account of indents and interest

interest accruing upon New-Loan and Continental certificates, the property of the state, marked E, it is necessary to observe that the sources from whence the state drew those indents, were, 1st. A sum equal to the interest paid by the state upon the New-Loan debt. 2d. The interest accrued upon the New-Loan and Continental certificates redeemed by the Land-Office, or that had in any other way become the property of the commonwealth from the time to which interest had been paid upon the same when thus redeemed, until the 31st of December, 1790, when the arrearages of interest were funded by the United States.

“ But upon an examination of the subject, it appeared that a great deficiency had arisen under the first head beyond the balance for which the Comptroller was accountable. The account F, states that deficiency, by which it appears that the State-Treasurers have been credited by a sum of £. 11,598 : 9 : 9, over and above the sums which from the endorsements on the certificates appear to have been paid. This must have arisen either from the State-Treasurers, having through some mistake, been credited for a larger amount than they had disbursed, or from the whole amount of interest paid, having not been endorsed on the certificates. In either case the balance must be repaid to the state by the officers who have been guilty of the neglect; but it will require a very long examination, and a comparison of the endorsements on each certificate, with the corresponding payments at the Treasury, before it will be possible to discover exactly where the mistake or the fault *lies*. 5.

Mr. Nicholson's Answer.

5. “ As the last paragraph refers to the State-Treasurers and not to me, I pass over without observation, save that the method they mention, hath long before their appointment been adopted and proceeded in by me, and that it requires, as they say, a very long examination, &c. to insert in the books opposite the certificates respectively, every successive payment of interest made thereon,

thereon, and that however great the work, it is now nearly finished."

[Report continued.

"In the mean while, in order to ascertain the balance which, exclusively of that deficiency, might be due to the state, the committee charged the Comptroller, as will appear by the account E, with the amount of interest which appeared to have been paid upon the face of the certificate re-exchanged or redeemed by the Land-Office. But as the Register has not yet furnished the committee with the total amount which, from the examination of the certificates themselves, will appear to have been paid upon the certificate re-exchanged; the committee have been obliged to rest, for the present, satisfied with a rough calculation made by themselves from the books of New-Loan certificates received on exchange. They have also charged the Comptroller with the indents he had drawn upon the continental certificates yet in his possession, and with four years interest upon the two balances, amounting together to $12,456\frac{2}{3}$ dollars, which appear to be due by him in continental certificates, from the accounts, C, and D.

"It will appear by the credit side of the same account E, that $27,473\frac{28}{100}$ dollars, in indents and 3 per cent. stock, which should have been paid long before, were delivered or transferred to the Treasurer only in June last. The committee thought themselves obliged to write to the Governor on that subject, in order to hasten the delivery. By the same account it appears that the Comptroller is accountable for a balance of $47,544\frac{1}{2}$ dollars, a great part of which, should, in the opinion of your committee have been paid before this time. It is however, proper to observe, 1stly, That about 20,000 dollars, part of the said balance, arise from indents due by parties (upon equalizing the interest on the exchanges of New-Loan and continental certificates) which they had not paid, by the information of the Comptroller, in June last, but for which he is accountable as by the resolutions of Council above-mentioned, he was not to deliver

deliver any continental certificates until he had received the full amount of interest due.—2ndly, That the Comptroller has mentioned that he would transfer to the state whatever balance might appear to be due by him, as soon as the same was ascertained. 6

Mr. Nicholson's Answer.

6. "It is not necessary for me to make any remark on the balance of indents, represented by them in the 10th line from the bottom of the 126th page, to be also due from me, as they have stated themselves in the 15th line preceding, that it grew out of a "*rough calculation*" they had made, and as they have also herein done me the justice, in the 3d, 4th, and 5th lines of this page, to mention what I had said that if any balance might appear due from me, I would transfer it to the state "*as soon as the same was ascertained.*"

"As the committee there also observe in the six last lines of the 126th page, and two first lines of the present one, I know that I am not to expect from the state, a credit for indents due by individuals. It is a debt due from them to me, and if lost, or such part thereof as may, it must be sustained by myself. The exchanges required by law could not be deemed to be made, until those indents were previously paid, as it is thereby expressly directed.

"In the beginning of the sentence, and at the 17th to the 14th line from the bottom of the last page, the committee again mention the late delivery of about 27,000 dollars in indents, to the Treasurer; the fact is, the quantity not funded, was small in itself, and consisted of a great number of small and broken indents which it required time to count, and which time was then, I thought better employed at our accounts with the United States. It was therefore delayed as well as much other business until that throng was over, after which they were attended to; they would have been delivered then, had no steps been taken by that committee, who I conceived had nothing to do with it. It is further observable, that a considerable part of the said 27,473 dollars

28 cents, was already funded and stood to the credit of the state, so that the interest came as regularly into the Treasury, as if the stock had been in the Treasurer's hands."

Report continued.

"S E C O N D H E A D.

"*Depreciation Debt.*

"BY an Act passed on 18th day of December, 1780, Council were directed to appoint three Auditors, with powers to settle the accounts of the officers and soldiers of the *Pennsylvania* line, in the Act described for the depreciation of their pay, and to issue certificates for the same. By an Act passed on the 10th of April, 1781, Council were empowered to appoint additional Auditors for the purpose of carrying into operation the last mentioned Act; they were also directed to draw upon the State-Treasurer for such sums of state-money as they thought convenient, and to place the same in the hands of commissioners to be appointed for that purpose, who should, before the first day of May following, repair to the several rendezvous of the regiments, and pay to such of the officers and soldiers who should apply for the same, one third part of the sums specified in the Depreciation certificates, issued to them by the Auditors; and after receiving the old certificates, should transmit them to the Treasurer, and issue new ones for the balance. By the same Act it was provided that such persons as should not apply to the commissioners, might at any time afterwards apply to the Treasurer, who was directed likewise to pay one third of the original certificates in state-money, and to issue new ones for the balance. In conformity to those two laws, *James Stevenson* and *John Nicholson* were appointed auditors and commissioners, together with several other persons, but the presence of one of them was declared to be necessary in transacting the business of commissioners, and they were directed to collect all the papers and vouchers relative to those transactions. Receipts were also directed by Council,

to

to be taken for the payments in shilling-money, and all the commissioners have accordingly settled their accounts with the former Auditors of accounts.

“ By an Act of the 13th of April, 1782, the Comptroller-General (whose office had been instituted by another Act of the same date) was directed to settle the accounts of the depreciation of the pay of several officers and others in the Act described, and Council were authorised to draw on the Treasurer, for such sums of state-money as might, from time to time appear, by the report of the Comptroller-General to be necessary, and to place the same in the hands of the said Comptroller, who should pay to such persons as might apply for the same, one third part of the sums found due on settlement in bills aforesaid, and for the remaining two thirds, they should receive certificates in like manner as the other troops of the state. Although, by the Act instituting the office of Comptroller-General, the office of Auditors to settle the accounts of depreciation, had been virtually abolished, yet neither by the same nor by the last mentioned Act, was any provision made for settling any original depreciation accounts, except of those in the Act specially defined, nor for issuing of course any original certificates except for them, and, indeed, from the general tenor and expressions of the last Act, the power to pay one third in money, and to issue certificates for the two thirds remaining, seems confined to the same description of persons (e).

“(e) The expression *such persons*, in the 9th section of the law, general as it may, on first view, appear, can only apply to the persons in the Act mentioned, as there is not in the section a single word about depreciation accounts, nor any other expression to define who the persons are. 7.

Mr. Nicholson's Answer.

7 “ Here the committee are at some pains to define the import of a section of the law of 13th April, 1782, which I was thereby required to execute; the words directed me to pay in state-money of 1781, to “*such persons*” as should apply therefor, one third of the depreciation allowed at settlement—this I did; but

had the words been “to such of the persons *aforsaid*” as should apply, I should then have conformed my conduct to what they thought it ought to have been under the law as it stands. To me it appears plain; I never had a doubt of its meaning, nor should I have supposed a doubt would have existed with any, had it not been for this of the committee.

“I do not indeed find that they suggest any articles of impeachment against me for this violation of their construction of the law; had the advantages which were gained by the state, in the saving of interest, on the third part thus paid by me, lay on the other side, so as to have formed a debit of account, and charge against me, no doubt it would have had a different turn with them.”

Report continued.

—By the Act of the 20th of September, 1782, all the powers formerly exercised by the above-mentioned Auditors, were vested in the Comptroller, whereby he became authorised to settle all depreciation accounts, and to issue original certificates for the same—a power which he seems however to have exercised from the time of his *appointment*. 8.

Mr. Nicholson's Answer.

8. “Had this committee been desirous of a candid investigation, and enquired, I could have shown them that the very reverse of this was true; that in no one instance was this power exercised until it was legally given, and that in fact it appears from the minutes and files of the Assembly, the next law alluded to was founded on my representation, that I had not power to adjust and certify those claims, the settlement of which it provided for.”

Report continued.

—He also exercised all the powers vested formerly in the above-mentioned commissioners, who were authorised to pay a third in money, and to issue certificates for the two thirds remaining, although they were not farther

ther vested in him than by the above-mentioned 9th section of the Act of the 13th of April, 1782, (i). 9.

(i) For the different descriptions of persons entitled to depreciation, see the Acts of 18th December, 1780, 10th of April, and 1st of October, 1781, 13th of April, 1782, 8th of April and 22d of September, 1785, and 8th of March, 1786.

Mr. Nicholson's Answer.

9 "Here also they misrepresent the matter, no such thing happened. I exercised none of the powers of those commissioners after I ceased to be one of them myself. The payments therein referred to, were made by me, in consequence of directions and authority to the Comptroller-General; and the payments thereof from the Treasury, were on express warrants of the Supreme Executive Council, founded on the reports of the Comptroller-General, as by a reference to the law and those drafts and reports will appear."

Report continued.

"By an Act of the 25th of March 1786, it was enacted that, in order to prevent frauds, no depreciation certificates should be delivered except to the parties themselves, their attorneys in fact or executors, or to their administrators legally entitled to the same, or a share thereof, by succession *ab intestato*; and that all depreciation certificates unclaimed on the 1st of April 1787, should escheat to the commonwealth; the Comptroller-General was further directed, within two months after the said day, to transmit a list of all such unclaimed certificates remaining in his hands, and of all that might have been claimed, if any, together with the certificates, to Council, that the same might be endorsed and rendered useless.

"By the Act of the 18th of December 1780, confiscated estates were directed to be sold at public vendue for depreciation certificates, which were to be delivered to the State-Treasurer, and by him cancelled, in such manner as the Assembly should direct. All the certificates thus received by the late Treasurer, Mr. Rittenhouse, were delivered to the Comptroller-General.

"By an Act of the 12th of March, 1783, a certain tract

tract of land, lying north-west of the *Ohio* and *Allegheny* rivers, and in the Act described, was directed to be sold at public vendue, for depreciation certificates, to be paid to the Receiver-General of the Land-Office.

“By the Acts of the 1st of April, 1784, and 8th of April, 1786, depreciation certificates were made receivable in payment for lands, and city lots, and payable for both to the Receiver-General, who was directed to deliver the same to the Comptroller-General.

“Provision was made for the final redemption of those certificates, and those commonly called *Funded Debt*, by the Acts of the 9th of April, 1791, 10th of April, 1792, and 9th of February, 1793.

“Previous to the appointment of the Comptroller-General, the Auditors and Commissioners vested with the power of issuing depreciation certificates, went, according to the orders of Council, to several posts, and there settled the accounts; issued the certificates, and made the payments in shilling money. The Comptroller is in possession of the books they kept of their transactions; of the counter parts of the certificates issued by them, and other vouchers. The certificates received by them upon renewals, were also delivered to him. The books of those transactions are not all of them equally correct and perfect. From them, however, and the counter parts, the Comptroller has formed books of depreciation certificates, issued before his appointment; and has continued them in the same form for those issued by him. Those books contain the numbers of the certificates; the names and rank of the grantees, and the amount of each certificate, distinguishing the original from the renewed, but do not distinguish in the column of original, those which were granted in full, from those which were issued only for two-thirds (the other third being paid on settlement) nor in the column of renewed, those which were granted for the accommodation of the parties in exchange for, and to an equal amount of other certificates, from those which were issued for two-thirds only of the original certificate;
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the other third having been paid in shilling-money. Those books, therefore, are not, alone, sufficient to settle either the general account of depreciation debt, or the account of the Comptroller with the depreciation certificates by him received. For in order to know the total amount of the depreciation debt paid by the state, it is necessary to add to the amount of the original certificates issued, the amount of shilling-money paid upon settlement, exclusively of those certificates; and the Comptroller, exclusively of all the certificates he may stand charged with for renewals, must also be charged with the whole amount of the shilling-money paid in part of original certificates, as the amount of those original certificates delivered by the parties, upon receiving one-third thereof in said money, and the remainder in new certificates, exceeds the amount of those renewed certificates exactly by the amount of shilling-money, thus paid the parties in part.

“The Comptroller, at the request of the committee, furnished them with copies of the accounts of the several Commissioners appointed to pay that shilling-money, as settled by the former Auditors of accounts, and as those accounts did not in all cases distinguish between the money paid upon settlement, and the money paid in part of certificates, he, by sundry letters and memorandums, informed the committee of the sums respectively paid. The accounts of the Comptroller himself in shilling money, have been settled by the Assembly as far as the 11th day of November, 1782; his accounts from that day to the 19th of November, 1783, were exhibited to the committee, and he furnished to them an abstract of his accounts from the 19th of November, 1783, to the year 1787. Those last accounts were sent, since the appointment of the committee, to the Register-General, to be examined and settled by him according to law. Some of those accounts may have been entered in the general books, of which mention will be made hereafter, under the fourth head, but all of them were not, and such as were, were not so digested as to distinguish

distinguish between the money paid on settlement, from the money paid in part; and of course would (had it not been for the explanations of the Comptroller) have been insufficient for settling either the accounts of depreciation debt, or of the Comptroller.

“ The account G is the general account of the state with the depreciation debt. The debit side is left blank, as no accurate calculation has been procured of the same, and it is now useless. The credit side consists of the shilling money paid upon settlement of the total amount of original certificates issued, (distinguishing in each case the amount paid, or issued by the Comptroller, or by the respective Commissioners or Auditors) and of the escheats as returned to the Secretary of the Commonwealth, per list annexed. (k)

(k) The Comptroller had always returned those escheats as amounting to £. 57,540—an amount estimated, but not grounded upon any exact calculations. The Act of the 25th March 1786, is grounded upon an idea that all the certificates were made out, as it orders the Comptroller to return to Council, all the unclaimed ones by the 1st of June 1787. It appears, however, by the letter of the Comptroller to the Governor, dated the 22d day of June 1792, that he made out the certificates only upon the application of the parties, and of course that the claims, and not the certificates unapplied for, escheated to the commonwealth by virtue of the Act above-mentioned. The amount of escheats as returned at the same time by the Comptroller, is only £. 42,293 : 4 : 4½. 10.

Mr. Nicholson's Answer.

10. “ I had, on estimation, returned them, at £. 57,540.”

Report continued.

—The letter and return were sent in pursuance of a request of the Governor of the 29th of May 1792. According to the law, whose intention was clearly to prevent any certificates issuing after the 1st of April 1787, he should have made that return five years sooner than *he did*. 11.

Mr. Nicholson's Answer.

11. “ It will not appear strange, that in an estimation, where, as the committee observed, no exact calculations thereof were made, there should be a difference as great as the above, from the true amount : but it is to be also considered, that the first amount was lessened by certificates granted after April, 1787, as appears by the books and receipts for accounts settled after the same date ;

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but which had been rendered before it; and owing to the want of testimony, and additional proof, were postponed till afterwards; so that here, also, if the *committees intention of the law* was right, “that it clearly prevented any certificates issuing after the 1st April, 1787”—that law was violated by the Register-General and myself, for several of those accounts were not settled till after he came into office in 1789; but the law admits no such construction as may appear therefrom.

“Having made out the depreciation certificates only as they were applied for, I had no return of any to make as I informed the Council at the time, except some I had stopped, on the presumption that though they were delivered by the Auditors, they had never come to the possession of the parties in whose favour they were granted. These certificates with a list thereof I took up to the Council chamber, but there was a controversy and suit then depending respecting them, and therefore they could not be cancelled. This being what the law required of me, I did not delay it as the committee say, for *five years*; the fact is the list furnished the Governor at his request in 1792, whatever purposes it might serve, was not the one required by law; it was however furnished when asked, and had it been requested by the Executive Council they should then have had it.”

Report continued.

“Three enquiries arise on the subject of the issuing depreciation certificates—1st. Have no other certificates been issued than those entered upon the books of issue? 2d. Have no certificates been issued in the name of persons who, by the terms of the laws, were not entitled to the same. 3d. Have the certificates always been delivered to the persons in whose name they had issued, or to their legal representatives? The answer to the first query may be obtained, from a comparison of the books, with the certificates delivered to the Register, after the same shall have been numerically arranged, and with the list of those subscribed to the loan of the United States. Should any certificates appear, upon such examination,

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to have been issued by the Comptroller, and not have been entered, he must account for the same. The second enquiry will require a minute comparison of every certificate, with the number, rolls and other vouchers upon which the certificates issued. As to the third, it will be very difficult fully to ascertain it, because prior to the law of the 25th March, 1786, no receipts were taken for certificates either issued by the Auditors or the Comptroller. There is however a kind of indirect proof, by which a great part of those certificates are discovered to have been issued to the parties themselves. Many of the certificates were assigned, and receipts were taken on the back of those which were discharged in part, in shilling money for the same. The committee were furnished by the Register-General with the depreciation certificates delivered to him by the Comptroller; they examined them, set aside all those which appeared to them, upon the face of the same, to bear evidence of their having been delivered to the parties; and formed a list of the others, a copy of which they are to transmit to the Comptroller, as he thinks he may collect some other indirect proofs respecting many certificates upon which no receipt nor assignment appear (*l*).

(*l*) Most of the receipts and assignments are irregular for want of witnesses.

—A similar examination should take place in regard to the certificates delivered by the Treasurer to the Register, and to those subscribed to the loan of the United States, if they can be obtained for that purpose. It will be also necessary to examine the letters of administration, and receipts given by administrators for all certificates issued to the estate of any deceased person (*m*).

(*m*) The reasons why the committee did not make that examination, nor the comparison of the muster rolls with the certificates, was, because the muster rolls, letters of administration, and other vouchers, were lodged with the commissioners appointed to settle the accounts of the United States with the individual States.

—The frauds committed by individuals, in procuring through the means of such letters, certificates they had no claims to; and the committee are of opinion suits should

should be instituted against the parties where they can be discovered, and where there is any probability of recovering any part of the same. 12.

Mr. Nicholson's Answer.

12. "Here the committee represent that they went into an investigation of the depreciation books and certificates, and they report the progress they made therein. The examination of these accounts hath been proceeded in some length by the Register-General, and I am in hopes will soon be finally closed and settled by him. But how the committee could (if the papers had not been in the possession of the United States), or how the person who examines the letters of administration granted for estates of persons deceased, can, as the committee say, at settlement discover the frauds which have been committed by individuals, so as to institute suits against the parties, exceeds my comprehension. I will allow that the gentlemen of that committee possessed a great deal of wisdom, some of them a great deal indeed! but it must require more knowledge than heaven hath imparted to us mortals to determine *from an inspection of a letter of administration regularly granted*, whether the person on whose estate it was granted, was dead or alive, without some other knowledge of the fact, or whether even before the Register of Wills there might not have been an assumption of false names. If these frauds are discernable from such examination, I was certainly to blame in not detecting them before I delivered any estate upon them."

Report continued.

"Beside the books above-mentioned, there are books kept in the Comptroller's office of the certificates redeemed by the Land-office, perfectly similar to those mentioned under the New-Loan head (n);

(n) There are also similar books for the Funded debt.

—but there are none of certificates received and renewed, nor is it possible to ascertain in every case of renewals, for what number each renewed certificate was issued,

“By the account H, which is the general account of the depreciation certificates issued, it appears that there is yet a balance outstanding, not redeemed, amounting to £. 5,710 : 4 : 3 $\frac{3}{4}$. Two of the items require some explanation; the first, of certificates stopt or delivered, includes the certificates of *Christie* and *Ryan*, (from which the letters of the Comptroller to the Governor, dated the 22d of June, 1792, and the letter of the same to Council, dated April the 7th, 1788, will account) a certificate in the name of _____ upon which Col. *Forrest* administered, in order to prevent its being taken fraudulently, by virtue of some letters of administration, and which he left with the Comptroller, in order that it should be delivered to the proper party, who has never applied for the same; and another one in the name of *Hardie*, stopt by the Comptroller. The second item of errors discovered, amounting to £. 5,051 : 12 : 1 $\frac{3}{4}$, arises from errors made by the auditors in the settlement of the accounts for the depreciation of the pay, discovered by the Comptroller, and recovered by stopping the certificates and issuing new ones to a less amount. This amount was not entered in the books, (although both this account, and the account of the Comptroller with depreciation certificates, could not be settled without knowing it,) and has been furnished as a separate account, by the Comptroller.

“The account I, is the account of the Comptroller with depreciation certificates by him received. He is credited in that account for a sum of £. 2833 : 14 : 4, for certificates renewed (with which he is charged on the debit side) the original of which had been lost, but were renewed by special resolutions of the Assembly, and for which, of course, he should not be charged, as he never received the original corresponding thereto. That amount has been furnished by the Comptroller, but not compared with the resolutions by the committee. It appears by that account, that there is a balance of £. 5,551 : 2 : 10 in favour of the Comptroller, 13.

Mr.

Mr. Nicholson's Answer.

13. "This with the interest thereon from April, 1781, exceeds the balances in other certificates which they found against me; they however balance this by supposing it to arise from some mistake; candor and equal justice would have called for the same conclusion in those accounts where the balances were by them stated against me, until both were liquidated and settled, which is now proceeding in, and I hope will soon be done; but in the former case, what say the committee? *He should pay these balances immediately!*"

Report continued.

—which

must arise from some mistake not yet discovered, probably from a greater number of certificates having been issued or renewed by the Auditors, than are entered in the books of issue, or from some mistake in the accounts of shilling money, or from some error in the amount of certificates delivered to the Register, which is taken from the Comptroller's books; the addition on the Register's own books not being yet completed and compared.

" T H I R D H E A D.

"BY an Act passed the first of April, 1784, the Comptroller was directed, upon liquidation of the several accounts of the officers, soldiers and citizens of the state, to grant certificates to them, for the balances due to them respectively, and by an Act passed the 30th of March, 1785, which provided for similar certificates being issued for claims against forfeited estates, it was also enacted, that all persons who had balances due by the state, upon the settlement of their several accounts, should be entitled to receive certificates as citizens of the state, (o).

(o) See also acts of the 25th March, 1785, of the 3d and 27th March, 1790, and resolutions of the Assembly of the 25th March, and 22d December, 1784.

—Those certificates were by the same acts, mentioned under the foregoing heads, made receivable
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in payment for lands, and their redemption was provided for by the same laws and in the same manner as depreciation certificates.

“ Books of those certificates, issued, redeemed by the Land-Office, and renewed, have been kept by the Comptroller, which are similar to those kept for other kind of certificates, as mentioned under the foregoing heads. The committee were anxious to investigate whether those certificates had always issued upon proper principles, and for debts justly due, and whether they had always been granted to the parties thereto entitled. But as all the vouchers and receipts relative thereto, were, (as the Comptroller informed the committee) lodged with the commissioners appointed to settle the accounts of the individual states with the United States, it was thought better to defer the investigation, till after the 1st day of July, at which time the appointment of the commissioners expired. When that day came, however, the Comptroller informed the committee, that those papers were kept in the possession of the United States, both as vouchers of the claims of *Pennsylvania*, and as checks against future demands that might hereafter be made by individuals. The committee applied a few days after to the Secretary of the Treasury of the United States, for leave of having access to those vouchers— This was granted by the Secretary, (as will appear by his letter of the 17th of July) provided the examination was confined to the papers of the commonwealth, and not extended to any statements or remarks of the late commissioners; but it was at the same time requested that the inspection should be deferred till the return of Mr. *Farrel*, late clerk of the commissioners, who alone knew the disposition of the papers, and was then absent. Upon being informed of the return of Mr. *Farrel*, the committee wrote a second letter to the Secretary on the 5th of August. Orders were accordingly given to Mr. *Farrel* to attend the committee at any hour they thought convenient, and from the 13th of August, they had free access to all the papers they wanted; but the time being
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so short, prevented them from entering into the full investigation they intended (*q*),

(*q*) The same reason prevented the committee from examining the muster rolls and other vouchers relative to depreciation certificates.

—and they examined only different parcels of accounts, taken from different species of debts, in order to form a general idea of the manner in which the business was transacted. As far as they examined, they found vouchers along with every account, and receipts for all the certificates issued, given either by the parties, their assignees, or attorneys (and then the assignments or powers of attorney are filed with the account) (*p*)

(*p*) There is an exception as to the clothing accounts for which no receipts, assignments, or powers, are filed with the accounts in the possession of the United States.

—or by certain persons to whom the certificates were given to be by them delivered to the proper parties. This last mode (to wit, to deliver certificates to some persons who gave receipts for the same, and promised to distribute them to the parties) was adopted chiefly to facilitate the payment of militia companies. The total amount thus delivered is as per an annexed list £.91,987 : 8 : 2 $\frac{1}{4}$; books have been kept of the certificates delivered in that manner, in which each individual stands charged with the certificates by him received, and he is to be credited either by producing the receipt of the party, or by returning the certificates. The amount thus returned, and which on the 11th day of June past was in the possession of the Comptroller, is £.2,317 : 0 : 8. The Comptroller stands charged in the same books with an amount of £.5,544 : 4 : 7, for which he made the certificates out, but has never issued them. Two lists including the numbers and sums of those certificates, and the names of the grantees, as given to the committee by the Comptroller, are hereunto annexed; and he is charged in his account with funded debt certificates, marked L, with the aggregate of those two sums (as having never been issued) amounting to £.7,861 : 5 : 3. Some measures should be taken to have those certificates disposed

disposed of; but whether they should be cancelled, or a limited time given to the parties to apply for the same, the committee will not pretend to say; in their opinion, the Comptroller should have rendered an account of them before this time. The balance of the above mentioned account L is not struck, the amount of the certificates delivered to the Register not being yet added, although the whole is delivered. By the general account of the state with the certificates of funded debt, marked K, it appears that the balance now outstanding, including the above mentioned sum of £. 7,861 : 5 : 3, not yet issued is £. 16,713 : 3 : 8 $\frac{3}{4}$.

“ Besides the above mentioned books, there is a book of accounts of clothing, an abstract whereof is hereunto annexed. In those books each party is credited for the number of years, months and days he staid in the army, from the 1st of January, 1780, at the rate of £. 37 : 15 a year, for clothing due to him; and is charged with the articles of clothing received by him at the same average prices by which the rate of £. 37 : 15 is computed.

“ From an investigation of the transactions relative to that subject, it appears, That by a law passed the 1st day of March, 1780, certain officers by the Act specified, were promised during their continuance in actual service, one complete suit of clothes each, once in every year, and Council directed, from time to time, to purchase the same; that by the same law Council were also directed to purchase, for the use of the army, rum, sugar, coffee, and certain other enumerated articles, to be distributed amongst the officers and soldiers in certain proportions, and at certain prices by the Act prescribed; that in conformity to that law, large quantities of clothing and of the enumerated articles (then known by the name of “ Army refreshments,”) were purchased by Council and distributed amongst the troops by commissaries for that purpose appointed; that after the law, by which the depreciation of pay of the troops of the state was made up to them, had passed, the two
provisions

provisions above mentioned were supposed to be virtually repealed, 14,

Mr. Nicholson's answer.

14. "This appears about as reasonable as that a law allowing mileage to members of Assembly should repeal the law allowing their daily wages."

Report continued.

—and Council ceased to purchase the clothing, and refreshments, and that in December, 1790, after the law had been dormant for ten years, 15,

Mr. Nicholson's answer.

15. "If the law had slept a century, still it was a law, and as such entitled to the same degree of respect with any other law; but the fact here is just the reverse of what is stated by the committee. In 1784 a number of officers' claims under this Act was presented to my office, and on the 1st of March, 1784, I reported in favor of their claim to the late Council. Instead of acting upon these claims, upon which the fate of a number similar was to depend: they are endorsed in the hand writing of John Dickinson, Esq. then President of the Supreme Executive Council "postponed."

Report continued.

—some speculators who from the manner in which they made their purchases, seem to have received the best possible information on the subject, 16,

Mr. Nicholson's answer.

16. "The inuendo in this part of their report and the observations in another paragraph afterwards "that there were strong reasons to believe that one of the speculators had at least received his information from the Comptroller's office,"—at the same time that it excited my contempt for those of the committee who made it, called for some notice from me; in order therefore to understand what was meant thereby, I wrote the letter contained in the schedule marked (A.)

(A.)

(A.)

“SIR,

Nov. 28, 1793.

“IN a printed copy of a report to the late House of Representatives, from a committee of whom you were one, is the following paragraph—For those reasons, and because there is strong reasons to believe, that one of the speculators had at least received his information from the Comptrollers’ office, the committee are of opinion—&c.

“You will oblige me by informing, by a line, the name of the person above referred to—one of the speculators.

With great respect, &c.

JOHN NICHOLSON.”

BENJ. R. MORGAN, Esq.

—and received the

answer marked (B.)

(B.)

“SIR,

Dec. 1, 1793.

“I CAN have no hesitation in informing you, that the person alluded to in that part of the report of the committee of investigation, to which your letter refers, is Mr. *Samuel Baird*, formerly of *Norris-town*, in *Montgomery* county.

With great respect, &c.

B. R. MORGAN.”

JOHN NICHOLSON, Esq.

—Finding in this answer that *Samuel Baird*, Esq. was the person alluded to, I think it proper first to declare that this gentleman is one for whom I have long had a friendship, and of whose integrity I have an high estimation; some things are alledged against him in some of these purchases, and a suit is depending in which I shall be sorry if I shall be found to have been mistaken in his character.—After this I proceed to take a view of the situation of his purchases, and of this subject generally, first, I find that the number of claims of this class rendered amount to 366.

“Second, I find that of these, 66 were rendered by said *Baird*, of which two were for General and *D. St. Clair*, and were not claimed by him, but received by themselves respectively.

“Third, Although it required no official information to distinguish those gentlemen in the country, who had served as officers in the late army, so as to apply only to those who were entitled; yet we find, and the committee, from

from the books laid before them, had an opportunity to observe that of the 64 claims rendered by *Saml. Baird*, there were two, *Christopher Gettig* and *Casper Wetzel's* estate, who were not entitled to any emoluments from the said law. Had he been instructed in his purchases by me, I would have informed him of this; instead of which he gave them as much I believe as any others.

“Fourth. Another question whether he obtained previous information from me of the clothing received by the different officers, so as to ascertain the balances due, can best be refuted by a view of the facts. Of the 62 claims remaining as aforesaid, presented by him, the following persons had received such a quantity of clothing as to leave a balance due by them to the State on said account, viz.

Capt. <i>James Vaugh</i> ,	£. 4	5	2	due by him.
Capt. <i>Sam. Miller</i> ,	19	8	9	do.
Capt. <i>Wm. Gray</i> ,	2	0	2	do.

Of the officers some had more and some less due to them; yet I have been informed he gave a like sum for the risque of each; and that for the above who had nothing to receive, he gave as much as any—Does this look like the best possible information? does it look like any proper information at all?

“Fifth. Besides the above there is another proof in the account of Capt. *Symonds*, that I did not *at least* favor the claims of said *Baird*; this will appear from the proceedings on that account, which are detailed in the papers marked (C) in the schedule.

(C.)

March 19th, 1791.

“EXAMINED and settled the account of arrears of clothing of Capt. *Jonas Simonds*, and allowed £. 145:0:5.

“The above was also allowed by the Register-General, and sent to be approved by the Governor; before the latter had decided thereon.

“The same was re-settled as follows, viz.

“April 19th, 1791.

“WHEREAS a claim was made, and account in due time rendered, by *Samuel Baird*, Esq. attorney, for arrearages due to Capt. *Jonas Simonds*, as an officer of the late *Pennsylvania* line; which account has been settled, and allowed to amount of £. 145:0:5; and whereas, on a revision and re-examination of the same, and an investigation of the

War-Office of the United States, into the date and nature of the commission of the said *Jonas Simonds*, it appears that he was in the army at the time, although he received no share of the clothing, when clothing was furnished to each *Pennsylvania* officer in 1779. That he was an officer in Col. Lamb's regiment of *New-York* artillery, and as such commissioned; that he was only draughted into the *Pennsylvania* regiment of artillery, where he did duty from the year 1781; and that in fact he was not a *Pennsylvania* officer: Therefore, in virtue of the powers and authorities in me vested by law, I do hereby review and re-settle the said account of the said *Jonas Simonds*, rendered by the said *Baird*, and settled as aforesaid, and the claim wrongfully so awarded do hereby annul, and the said claim of the said *Baird* is rejected, not being within the provisions of the Act allowing clothing by the state to certain officers."

"Of this adjudication, I informed *Samuel Baird*, the person by whom this claim had been exhibited.

"On the 2d of June, I received a letter from the Governor, in the following words:

"SIR,

Philadelphia, 2d June, 1791."

"IN consequence of your representation of the 23d of April last, I think it is proper, that the claim of Capt. *Jonas Simonds*, to the gratuitous allowance of clothing from *Pennsylvania*, should be re-considered: I have, therefore, transmitted to the Register-General, and to yourself, copies of the documents which Capt. *Simonds* has laid before me on the subject.

I am, &c.

THOMAS MIFFLIN."

To JOHN NICHOLSON, }
Comptroller-General. }

"The inclosures were as follows, viz.

"SIR,

Philadelphia, June 2d, 1791.

"I FIND, that after my account for arrearages of clothing had been made out by Mr. *John Nicholson*, examined by the Register, and approved of by his excellency the Governor—that a re-examination has taken place, by Mr. *Nicholson*, in which he states as an objection, that I was not a *Pennsylvania* officer, and therefore not entitled to any emolument from the state as such.

"In order to prove that my claim on the state is well founded, I beg leave to refer you to the act of Congress, bearing date the third day of October, 1780, the arrangement of the *Pennsylvania* line, a copy of which I have inclosed; also the different muster rolls, and returns of the artillery, belonging to this state.

"These are objects of a continental nature, and how far they are binding on the state, I submit.

"However, I was received into the regiment of artillery belonging to this state, in consequence of the above recited Act of Congress, and have been settled with as such, in every instance, except the clothing account.—Perhaps it will not be amiss to mention, that I commanded a
company

company of artillery, in Col. *John Lamb's* regiment, that was raised in this state in seventy-nine, and received the stores given by the state of *Pennsylvania*, to the troops of her line, when in that regiment.

"I received the five months and a half pay from the state, when her line was dismissed the service; also my proportion of land, and my continental certificates, funded by this state—in fact, not a single demur has ever taken place, until the present.

"I beg you will lay my claim before the Governor.

I am, with respect,

Your most obedt. humble servant,

(Signed)

J. SIMONDS."

"The above is a true extract from a letter addressed to the Secretary of the commonwealth, by Capt. *Jonas Simonds*.

(Signed)

A. J. DALLAS, Secretary.

Secretary's-Office, *Philadelphia*, }
2d June. 1791.

"IT appears from the records of the War-Office of the United States, that by the arrangement of the *Pennsylvania* line, dated *Philadelphia*, December 22d, 1782, signed by *Arthur St. Clair*, major general, and which arrangement was to take place on the 1st day of January, 1783, that *Jonas Simonds* was arranged the fourth captain in the corps of artillery, of which *Andrew Porter* was lieutenant-colonel commandant—That six captains of the same corps, to wit, *Robert Coltman*, *Worsely Emes*, *James McClure*, *William Power*, *Thomas Douglas*, and *William Martin*, were returned as officers who were to retire from service, upon the 1st of January, 1783, in consequence of the reform then to take place.

Given at the War-office of the United States, the 5th of May, 1791.

JOHN STAGG, Junior, Chief Clerk."

"On the seventh of June I received another letter from the Governor, and inclosure as follows:

"SIR,

Philadelphia, 7th June, 1791.

"I THINK it proper to transmit to you a copy of the Register-General's report, on a revision of the claim of Capt. *Jonas Simonds*; and as the last section of the Act, on which the claim is founded, refers the determination of any difficulty or doubt, concerning the persons entitled to the benefits and advantages granted by the legislature, to the executive authority, you will be pleased to furnish me with your report, as soon as you conveniently can, that I may be enabled, with full information, to decide on the present case. I am, &c.

THOMAS MIFFLIN."

To JOHN NICHOLSON, Comptroller- }
General of *Pennsylvania*.

"SIR,

Register-General's Office, June 4th, 1791.

"IN obedience to your excellency's commands, I have revised Capt. *Jonas Simonds'* account for clothing, granted by virtue of an Act of the first of March, 1780, and find, that Capt. *Jonas Simonds* was commissioned

oned by Congress, in September, 1778, as a Capt. of artillery, and attached to Col. *Lamb's* regiment.—That he commanded two of the four companies raised in *Pennsylvania*, late *Lee* and *Jones'*—that, by the arrangement that took place the first of January, 1781, under the Act of Congress of the third of October, 1780, he was called, with his company, to join the 4th *Pennsylvania* regiment of artillery, under the command of Col. *Proctor*—that he was mustered and returned as an officer of the *Pennsylvania* line, with Capt. *Proctor*, who commanded his own and *Coran's* company—that he received his pay from, and settled his accounts with the pay-master of said regiment—also received part of the stores, granted by the state to the officers belonging to her line; received his donation lands from, and funded his certificates with the state—that the 7th section of the Act, 1st March, 1780, directs, “That the officers belonging to the troops of *Pennsylvania*, &c. shall be furnished with one complete suit of regimental uniform clothes, &c.” and in the twentieth section, in describing the troops entitled to the benefit of the Act, includes the companies late commanded by *Lee* and *Jones*.—And further, alluding to the officers and soldiers “who are, or shall be considered by the honorable Congress, as part of the quota of this state, &c.” I also find, that the Act of Congress of the third of October, 1780, provides, that the regiments of artillery, as they now stand, be considered as belonging to the states respectively, to which they are, or may be assigned; which states shall complete them to the full complement, supply them with necessaries, and in every respect treat them as if raised therein.

“I am, therefore, of opinion, that Capt. *Simonds* is entitled to the benefit of the Act of the first of March, 1780; and that his account for arrearages of clothing should be allowed, as stated, amounting to one hundred and forty-five pounds and five pence.

JOHN DONALDSON.”

To his excellency THOMAS MIFFLIN.

“Whereupon I wrote to the Governor, on the 7th of June, as follows, viz.

“SIR,

Comptroller-General's office, June 7, 1791.

“I WAS honored with your excellency's letter of the 2d instant, covering an extract of a letter from Capt. *Jonas Simonds*; and I have also received yours of this date, with the enclosure on the subject of the claim for the arrearages of clothing of the said *Jonas Simonds*, and, in obedience, I have reconsidered the said claim, and the reasons urged in support of it.

“If a recommendatory act of Congress was obligatory on the several states, unless adopted by those states, then would there be doubt the claim made for the arrearages of captain *Simonds'* clothing should be allowed, under the Act of Congress of October, 1780, as well as the claim of sundry officers in the regiment of cavalry, belonging to the line of this state, and others, in similar situation, whose accounts have been rejected; as well as many other claims, which this state have not agreed to, although recommended by Congress.

“If

“ If the having received state stores, as they were called, from this state, were the rule to determine the persons entitled to the benefits of the Act of March 1st, 1780, then would commissaries, forage masters, conductors of military stores, waggon-masters, and even the auditors of the main army have been entitled to arrearages of clothing, for each of these have received stores, as may be seen by the accounts thereof; indeed, there is one account raised by the officers who issued stores of this state, for detached artillery belonging to the state of *New-York*.

“ If to have been on the musters in the regiment to which he was annexed, and where he served, would substantiate this claim, the claims to clothing of the officers from *Connecticut*, *Jersey*, and *Virginia*, in the *Pennsylvania* regiment of cavalry, before mentioned, would have been well founded also. Indeed, I cannot conceive of his commanding a company in this regiment, to which he was attached, and being mustered at all, without being mustered where he served; these musters do not specify the state to which the officers respectively belonged. He was not commissioned as an officer of the *Pennsylvania* line, by his being attached to the *Pennsylvania* line; the Act of Congress aforesaid, (not of the state) allowed him to be treated in the same manner, &c.—to be like another, and to be that other, are different.

“ If the having had his certificates funded with the state, would support the claim in question, then would generals *Muhlenbergh* and *Neville*, of the *Virginia* line; major *James Moore*, of the *Delaware* line; and other officers of the lines of different states, who had become citizens of *Pennsylvania*, and had their certificates loaned—been also entitled to arrears of clothing. Captain *Simonds* was a citizen of *Pennsylvania*, and as such entitled to have his certificates loaned.

“ The observations, that he received a donation of land, and an advance of $5\frac{1}{2}$ months pay, from the state, lose their force, where it is considered that was done through mistake; when I made the returns to Council, upon which these benefits were granted, I did not know capt. *Simonds*' situation; and the same mistake, at first, induced me to pass the account in question, where it would probably have remained, had not another officer represented it, who saw and complained that he could not get what was granted to another in a similar case.—The five and a half months pay is credited to *Pennsylvania* by the *United States*, and it hath been already stopped from captain *Simonds*.—Respecting the donation land, I have already addressed your excellency, in order that it may be recovered to the state.

“ Although the state stores were issued without due regularity at first, yet after the Act of March 1st, 1780, I have examined, and do not find that any was issued from this state to captain *Simonds*: I have inclosed a number of weekly returns of that company, from which you will see, that the *Pennsylvania* officers only are included, and that this is left out; the one dated December 25th, 1780, after having been made out for the others, your excellency will observe, has had captain *Simonds*' name added in colonel *Porter*'s hand, on the 31st of December, 1780, and his proportion of rations also carried out, and added to the other officers;

officers ; but you will also observe, that although all this was done at the time to procure these stores for him, yet they could not be obtained, Why ! he was not a *Pennsylvania* officer ; and they were delivered only, as appears by the receipt on the back, to the other officers.

“ And further, he did not receive his depreciation of pay from this state, but that to which he belonged.

“ Moreover, when, according to the very act on which arrearages are now claimed, clothing was provided at the time, by the Council, for each person entitled, they directed a suit for each of the other officers of this company, and none for captain *Simonds*. If he was not entitled to clothing then, he could not be entitled to arrears therefor afterwards.

“ On the whole, the further I have examined into, the more clearly I am of opinion that this claim is not agreeable to law.

I have the honor to be, Sir, &c.

JOHN NICHOLSON.”

His excellency THOMAS MIFFLIN,
Governor of *Pennsylvania*.

“ On the 17th of June I received a letter, and inclosure, from the Governor, as follows—by which this claim was admitted, contrary to my judgment—viz.

“ GENTLEMEN,

Philad. 17th June, 1791.

“ AS a doubt has arisen, upon the validity of the claim of captain *Jonas Simonds*, to the benefits and advantages granted to certain persons, in and by the eighth section of an Act of the General Assembly, entitled “ An Act for the more effectual supply and honourable reward of the *Pennsylvania* troops, in the service of the United States of *America*,” passed on the first day of March, 1780 ; I have required the opinion of the Attorney-General upon the subject ; and in consideration thereof, and of the circumstances of the case, I am induced to believe, that the claimant was an officer within the meaning of the Legislature. In pursuance, therefore, of the authority to me by law given, I do adjudge and finally determine, that captain *Jonas Simonds* is entitled to all the benefits and advantages intended to be granted by the eighth section of the above recited Act ; and you will proceed in the premises accordingly.

I am, Gentlemen, &c.

THOMAS MIFFLIN.”

To JOHN NICHOLSON, Esq.

Comptroller-General ; and

JOHN DONALDSON, Esq.

Register-General of *Pennsylvania*.

“ SIR,

June 15th, 1791, Arch-street.

“ IN obedience to your commands, I have carefully examined the various documents transmitted to me, respecting the claim of captain *Jonas Simonds* ; and upon comparing the facts therein stated, with various resolutions of Congress, and the Act of Assembly upon which his claim

is

is founded, I am of opinion, that the claimant was an officer within the meaning of the said Act, and that he is entitled to all the benefit intended to be granted by the 8th section, to the officers of the *Pennsylvania* line, in the federal army.

I have the honour to be, &c.

WM. BRADFORD."

His excellency THOMAS MIFFLIN, Esq.

Governor.

" Sixth. There remains another incontrovertible proof that I did not, "*at least*" favor Mr. *Baird's* claims. On an appeal to the Supreme court by a number of officers whose clothing accounts were settled on the same principles exactly as those brought forward by said *Baird*, in which they complained of my mode of settlement being unfavorable to them. They obtained by the decision of the Supreme court per schedule (D),
(D.)

Capt. *Isaac Roach*, v. } Appeal from the settlement of accounts by
The commonwealth of } the Comptroller and Register-General of *Pennsylvania*, to the Supreme Court.

" I Certify, that at a Supreme court held at *Philadelphia*, for the state of *Pennsylvania*, on the eleventh day of January last, before the honorable *Thomas McKean*, Esq. doctor of laws, Chief Justice, and his associate justices, of the Supreme Court aforesaid, the above appeal was tried, and a verdict given, by a jury of the country, in favour of the said *Isaac Roach*, for the sum of two hundred and ninety-eight pounds eight shillings and one penny, with interest from the first day of July, 1783, and six pence costs; subject however to the opinion of the court, in a case stated; and that at a Supreme Court held at *Philadelphia*, on the thirteenth day of April, instant, after the argument, the said court were of opinion, and gave their judgment accordingly—First, that the sum with which the plaintiff is charged, for the clothing he received, is to be considered as continental money, and that the specie value thereof, is all that is at present chargeable against him; and that a balance is due to the said *Isaac Roach* from the commonwealth, on the said thirteenth day of April, of principal and interest, on the said clothing account, of forty-seven pounds sixteen shillings and five pence half-penny—Secondly, that the said plaintiff is not entitled to any arrears of half pay; but that the certificate for five years full pay, ought to have been dated, and to bear interest from the 22d March, 1783; and that the plaintiff is therefore entitled to charge against the commonwealth the interest on the said certificate, from the 22d March, 1783, till the 1st July following, which, with interest thereon to this day, amounts to the further sum of twenty-eight pounds and eleven pence, making in the whole, the sum of seventy-five pounds seventeen shillings and four pence half-penny, in specie; and that

that the commonwealth pay the costs of the appeal, amounting to eleven pounds eleven shillings and six pence.

Witness my hand, this 24th day of April, 1793.

EDWARD BURD.

Prothon. Supreme Court."

To his excellency THOMAS MIFFLIN, Esq. }
Governor of *Pennsylvania*.

Capt. *Nathan Bays*, }
v. } Similar appeal to the appeal of
The commonwealth } *Isaac Roach*.
of *Pennsylvania*.

"I Certify, that on a case stated similar to that of *Isaac Roach* aforesaid, the Supreme Court aforesaid were of opinion, and did adjudge, on the said thirteenth day of April, that there was due, on the same day, to the said *Nathan Boys*, on his clothing account, including interest, the sum of fifty-two pounds nineteen shillings and nine pence half-penny; and also a further sum of twenty-eight pounds and eleven pence, in specie, including interest, for his arrears of interest on his commutation money, from the 22d March, 1783, to the 1st July, 1783, and for the interest thereon, from that day to the said 13th day of April, 1793, amounting, in the whole, to the sum of eighty-one pounds and eight pence half-penny, in specie; and that the commonwealth pay the costs of said appeal, amounting to ten pounds three shillings and six pence.

Witness my hand, this 24th day of April, 1793.

EDWARD BURD.

Prothon. Supreme Court."

To his excellency THOMAS MIFFLIN, Esq. }
Governor of *Pennsylvania*.

Dr. *James Hutchinson*, }
v. } Similar appeal to the appeal of
The commonwealth } *Isaac Roach*.
of *Pennsylvania*.

"I Certify, that on a case stated, similar to that of *Isaac Roach* aforesaid, the Supreme Court aforesaid, were of opinion, and did adjudge, on the said 13th day of April, that there was due, on the same day, to the said Dr. *James Hutchinson*, on his clothing account, the sum of sixty-seven pounds sixteen shillings and one penny three farthings, in specie, including interest; and also a further sum of fifty-one pounds ten shillings and one penny farthing, in specie, for his arrears of interest on his commutation money, from the 22d March, 1783, to the first day of July, 1783, and for the interest thereon, from that day to the 13th day of April, 1793, amounting in the whole, to the sum of one hundred and nineteen pounds six shillings and three pence; and that the commonwealth pay

pay the costs of said appeal, amounting to ten pounds three shillings and six pence. Witness my hand, this 24th day of April, 1793

EDWARD BURD.

Prothon. Supreme Court."

To his excellency THOMAS MIFFLIN, Esq.

Governor of *Pennsylvania*.

Capt. *Stephen Beasley*,
v. } Similar appeal to the appeal of
The commonwealth } *Isaac Roach*.
of *Pennsylvania*.

"I Certify, that on a case stated, similar to that of *Isaac Roach* afore-said, the Supreme court afore-said were of opinion, and did adjudge on the said thirteenth day of April, that there was due, on the same day, to the said Capt. *Stephen Beasley*, on his clothing account, the balance of forty-seven pounds four shillings and seven pence half-penny, in specie, including interest, and also a further sum of twenty-eight pounds and eleven pence, in specie, for his arrears of interest on his commutation money, from the 22d March, 1783, to the first day of July, 1783; and for interest thereon, from that day to the thirteenth day of April, 1793, amounting in the whole, to the sum of seventy-five pounds five shillings and six pence half-penny; and that the commonwealth pay the costs of said appeal, amounting to eight pounds six shillings.

Witness my hand, the 24th day of April, 1793.

EDWARD BURD.

Prothon. Supreme Court."

To his excellency THOMAS MIFFLIN, Esq.

Governor of *Pennsylvania*.

Capt. *Henry Martin*,
v. } Similar appeal to the appeal of
The commonwealth } *Isaac Roach*.
of *Pennsylvania*.

"I Certify, that on a case stated, similar to that of *Isaac Roach* afore-said, the Supreme Court afore-said were of opinion, and did adjudge, on the thirteenth day of April, 1793, that there was due, on that day, to captain *Henry Martin*, on his clothing account, a balance of forty-seven pounds four shillings and seven pence half penny, in specie, including interest; and also a further sum of twenty-eight pounds and eleven pence, in specie, for his arrears of interest on his commutation money, from the 22d March, 1783, to the 1st July, 1783, and for the interest thereon, from that day to the said 13th day of April, 1793; amounting in the whole, to the sum of seventy-five pounds five shillings and six pence half-penny; and further, that the commonwealth pay the costs of said appeal, amounting to eight pounds six shillings. Witness my hand, this 24th day of April, 1793.

EDWARD BURD,

Prothon. Supreme Court."

To his excellency THOMAS MIFFLIN, Esq.

Governor of *Pennsylvania*.

Dr. *James Hutchinson*, Administrator of *Nicholas Fitzsimmons*,
 v. } Similar appeal to the appeal of
Isaac Roach.
 The commonwealth of *Pennsylv.* }

" I Certify, that on a case stated, similar to that of *Isaac Roach* aforesaid, the Supreme Court aforesaid were of opinion, and did adjudge, on the thirteenth day of April, 1793, that there was due, on that day, to Dr. *James Hutchinson*, administrator of *Nicholas Fitzsimmons*, on the clothing account of the same *Nicholas Fitzsimmons*, a balance of fifty-four pounds six shillings and five pence half-penny, in specie, including interest; and also a further sum of seventeen pounds two shillings one penny farthing, in specie, so the arrears of interest on the commutation money of the said *Nicholas Fitzsimmons*, deceased, from the 22d March, 1783, to the 1st July, 1783, and for the interest thereon, from that day, to the said thirteenth of April, 1793; amounting in the whole, to the sum of seventy-one pounds eighteen shillings and six pence three farthings; and further, that the commonwealth pay the cost of said appeal, amounting to the sum of ten pounds three shillings and six pence.

Witness my hand, this 24th day of April, 1793.
 (Signed) EDWARD BURD,
Prothon. Supreme Court."

To his excellency THOMAS MIFFLIN, Esq.
 Governor of *Pennsylvania*.

about £, 50, each on an average more than they were allowed by my settlement. This sum multiplied by 59 claims of said *Baird* would have given him £. 2950 more than I allowed him, and the interest thereon from July 1st, 1783.*

* The proof that no information of these accounts could have been obtained is farther contained in facts certified by *Jonathan Smith*, son of colonel *Robert Smith*, as follows, viz.

" I Certify, that the book of accounts of the officers' clothing, containing the articles by them received, and charged to them respectively, was made out partly by *George Walton*, and partly by myself, under the direction of the Comptroller-General, in whose office we then acted as Clerks: That the same was composed and taken generally from the receipts of the officers, respectively, to the various persons from whom they received clothing. And I do further certify, that none of those accounts were opened or stated in said office, before the expiration of the time limited for receiving such claims had expired, in January, 1791.

Witness my hand, Feb. 10th, 1794,
 JONATHAN SMITH."

Report continued.

—presented claims as attorneys and assignees of certain officers for the clothing due to them, that

that other officers, thereupon presented similar claims, whereupon certificates issued in their favour to the amount of £. 18,736 : 7 : 6 principal, with seven years and a half interest due upon the same.

“ The committee are of opinion that the issuing of those certificates was unauthorized by law: 17.

Mr. Nicholson's Answer.

17. “ To this I answer in general terms, that the Governor, the Register-General, and Comptroller-General all concurred in a contrary opinion. They all by their respective decisions on those several and respective accounts, on which they were by law called to act, declare the contrary—but the committee offer two reasons in support of their opinion.—

“ 1st. That the claim for clothing would range under none of the heads which the law gives those officers power to adjust. Whoever reads the law instituting the Comptroller-General's office, will need no other reply to this reason.

“ 2d. As to the mode of settlement, that is allowing these claims to be adjusted by the proper officers, yet they were not properly adjusted, they should have therein been charged with *the army refreshments*—here also the committee were unfortunate. On this account of army refreshments allowed at stipulated prices, but not received, almost every officer would also have had a balance to claim from the state, had they not been inhibited by a clause in the Act granting them, which declares, that no claim shall be made for back rations therein. Both these reasons are perfectly obviated by the decisions of the Supreme Court in the cases *see schedule (D)* aforesaid; for

“ First, By the decisions of the same court, *see Dallas's Reports*, page 263, they determine that, “ where the Comptroller-General has no jurisdiction originally, the Supreme Court on appeal from his decision can have none; but in the case of these clothing accounts they have had jurisdiction; therefore in those clothing accounts I had jurisdiction originally.

“ Second,

“ Second, On the appeal, in the Supreme Court from my mode of settlement, which the committee say they suppose granted too much instead of lessening the balance due to the party it is augmented; and more is allowed by the Court where the committee would take away part of what I had already allowed.

“ The opinion of the committee in favour of instituting a suit against me on the premises aforesaid, as expressed in the 3d, 4th and 5th lines of the 157th page, I pass over for the present, I shall take occasion to remark thereon when we come to the same idea again in their report, for it seems to have been a favourite idea, and is reiterated.”

Report continued.

“ 1stly. Because altho’ the officers might be entitled to clothing, it was only a claim which no officer of the commonwealth had a power to settle; for the law appointing the Comptroller, which by the 1st section thereof, gives him power to liquidate all claims against the commonwealth, and to judge of prices and charges in cases where the same have not been ascertained, expressly confines that power of liquidating and settling, and, of course, of judging of prices, to claims for services performed, monies advanced, or articles furnished by order of the legislative or executive powers; and under none of those heads could the claim for clothing be ranged.

“ 2dly. Because supposing the officers were entitled to clothing, and the power of liquidating their claims vested in any officers of government, yet they should have been charged not only with such articles of clothing as they had received, but also with the articles commonly called “ Army refreshment,” for which they had not paid; with which articles, it was in the power of the Comptroller to charge them, as the vouchers, receipts and books relative to them, and containing the account of the deliveries of the said articles were then in his possession, and are now with the other papers furnished

furnished by him, in support of the claims of *Pennsylvania*, to the late commissioners.

“For those reasons, and because there are strong reasons to believe that one of the speculators had, at least, received his information from the Comptroller’s office, the committee are of opinion that a suit should be instituted against him for the recovery of the amount of the said certificates.

“ F O U R T H H E A D .

“ *Settlement of accounts generally.*

“FROM the 13th April 1782, to the 28th of March 1789, the Comptroller had the sole power to settle all accounts either of persons having claims against, or indebted, to the commonwealth (the county treasurers and collectors of taxes excepted till the 24th of March, 1786) and to recover all balances due by any persons; and he was also to keep clear and distinct accounts of the revenues and expenditures of the commonwealth. From the 28th of March, 1789, to this date the power of settling accounts has been in the hands of the Comptroller and Register altho’ under different modifications, but the power of settling with the county treasurers and other revenue officers, was taken from the Comptroller by the Act of the 1st of April, 1790, and restored to him by the Act of the 1791.

“So far as relates to the settlement of accounts of the revenue officers, the committee have not been furnished, although they applied for the same, with any accounts settled later than those printed in the second volume of public accounts published by the *Comptroller*. 18.

Mr. Nicholson’s Answer.

18. “To this I answer, that all the accounts in the office settled, numbered and filed, were shewn to the committee, and submitted for their making such inspection of them as they chose; true they were not taken down out of the order in which they were placed, but this order

order was shewn them, and an alphabetical register thereof delivered to the committee, by which they might find the number and place on the files of any account they wanted—add to this at their request to have the accounts of the County Treasurers, selected, they were taken from those files, brought together and laid before them as far as I had settled them.”

Report continued.

—But the Register-General has promised to furnish them with an account of the settlements made with, and the payments made by the several county treasurers since his appointment to office, which will also furnish the account of taxes due by the several counties, an account, however, which never can be finally settled and the arrearages recovered under the existing laws; owing chiefly to the exonerations not having been settled according to law, 19.

Mr. Nicholson's Answer.

19. “To this I answer that they have been made and and returned by the commissioners; they have been credited the counties regularly as returned.”

Report continued.

—to the divisions of counties since the assessments of taxes, 20.

Mr. Nicholson's Answer.

20. “This, indeed, creates some difficulty, but it is readily surmounted, as must be generally known.”

Report continued.

—to the want of knowledge of the persons, or townships that are indebted, 21.

Mr. Nicholson's Answer.

21. “The amount due from each township is regularly stated, as may be seen on an inspection of the accounts of taxes, and the name of the collector is also known.” *I think they are mistaken in the three last matters.*

Report continued.

—and to the impossibility, unless those are previously settled and known, of striking the balance due by each county.

“By

“By the Acts of the 30th of September, 1789, the Comptroller was directed to furnish the Register with all the balances which on the 28th of March, 1789, were due to or from any person, between whom and the commonwealth accounts were depending. As all the accounts are not yet entered on the waste book, and the journal and ledger are not even carried so far as the waste books, that part of the law has not been carried into effect, for which the committee conceive that no proper excuse can be made as Clerks have these two years been allowed to that officer to any extent he *pleased*, 22.

Mr. Nicholson's Answer.

22. “The committee, perhaps, did not consider, or they would have added, that this unlimited permission extended not to Clerks, for the purposes of the office, generally, but only for one particular object thereof—and although I have employed twenty Clerks on our accounts with the United States, yet they were not allowed for other purposes; and the attention requisite from me to them, left the less for other duties.”

Report continued.

—and his duties, chiefly since the exchange of New-Loan and Continental certificates has been nearly completed, have been greatly *diminished*. 23.

Mr. Nicholson's Answer.

23. “I expected, that from October, 1791, the duties of the office would be less oppressive, and reduced to a moderate attention; and from that time, on that account, I voluntarily relinquished a portion of my salary to the state. But whoever will take the trouble to look at the volumes of my diary, for a course of 12 months, will, I think, say that I have still, at least, sufficient.”

Report continued.

—It is true that with most of the accounts and vouchers filed in the office, there is an abstract of the account digested in debit and credit, which is by itself a kind of waste book, and may be copied by any Clerk. From what has been
said

said, it follows that none of those general books are kept in regard to time; but the accounts are numbered, filed, and entered, generally according to their number in the books.

“In many instances, the committee conceived the books of the office might have been kept in better order, and that a clearer general mode might have been adopted. The books relative to the depreciation debt are the most irregular; but upon the whole, the committee do not think themselves perfectly competent judges on that *subject*, 24.

Mr. Nicholson's Answer.

24. “Here at last, is a matter of *opinion*, in which we are perfectly agreed.”

Report continued.

—and when it is considered that the business grew from time to time upon the officer as his duties increased, the want of a more perfect system that would have connected all his different transactions, and rendered a reference from the one to the other more easy, will not appear surprizing, to which consideration the committee will add that if all the duties of the Comptroller have not been equally well performed, the fault perhaps laid most with the Legislature, who had increased both his duties and his powers, farther than any man was able to perform, and farther than any man should have been entrusted with.

“The committee mean in a few days to make an additional report relative to the business of Doctor *Joseph Thompson*, which has already been before the Legislature (but the papers relative to which they received only since the House met) and of a few other points of less importance, to which they will add fundry balances of accounts which the Register is to furnish them with, and which will rectify any mistakes that may be found in the annexed accounts; but before they conclude this report, they must give a short account of what has passed concerning the certificates and books of the late agents of
the

the *Pennsylvania* line, an access to which the committee were refused by the Comptroller.

“ By a resolution of Congress passed the 3d of November, 1783, it was, Resolved, That the Paymaster-General deposit in the hands of regimental Agents, the certificates for the arrears of pay due to the officers and soldiers of the respective lines, to be by them delivered to the individuals to whom they belong, or deposited for their benefit as the supreme executive of the state to which the respective Agents belong shall direct.

“ By an arrangement which was rendered necessary on account of the dispersed situation of the *Pennsylvania* line, two agents for the whole line, (instead of regimental agents) to wit, Messrs. *Bowen* and *Beatty* were recommended by the officers of the line, approved of by Council, and their appointment confirmed by Congress. Those two agents proceeded to distribute the certificates according to the directions and under the regulations of Council, as by the annexed correspondence will appear. They, upon an occasion, sent their resignation to Council, and always conceived themselves to be officers responsible to the executive, and received £. 280 : 3 : 5 from the state for their expences.

“ On the 8th of April, 1785, they wrote to Council, that having nearly completed that business they were ready to deposit the remaining certificates (together with their books and vouchers) as the supreme executive might direct, agreeable to the Resolve of Congress of November 3, 1783; Whereupon Council, on the same day ordered that they should be instructed to deliver the same to the Comptroller-General of the accounts of this commonwealth.

“ The committee, by letter dated 24th June, 1793, requested the Comptroller to examine the books of the agents deposited with him, also the certificates still in his possession and to have an account of the amount delivered by him—To this the Comptroller answered on the 27th of the same month, that he considered himself as being accountable only to the United States, from
X
whom

whom he expected to receive a distinct compensation for these services.

“ The supposition of the Comptroller-General being at the same time an officer of the United States and of the State, was too absurd and unconstitutional to be admitted, and the committee rested satisfied with laying the fact before the Governor, mentioning at the same time that as the papers had been delivered according to resolutions of Congress, to such officer as the Executive of the State might direct, and without any intervention of the Legislature, it might be perhaps suggested that the officer then chosen was accountable only to the Executive and not to the Legislature; they concluded by saying that they had no doubt of the Governor taking effectual measures to compel the officer to render a full account of that transaction—But although the Governor gave him peremptory orders to submit those books, vouchers and certificates to the committee, and transmitted to him a copy of the opinion of the Attorney-General dated June 20th, 1793, (in which he gives his official opinion, that those books, certificates and vouchers were subject to the direction and controul of the Governor, and that he had a competent power to order the Comptroller to deliver them to whoever he pleased, and of course to direct that they should be submitted to the inspection of the committee) the Comptroller has persisted in his refusal—As it must be evident that the officers of the United States have no controul or power whatever over our own officers, and that these of course must account only to our own Executive who then will render an account of the same to the proper officers of the United States whenever required; no proper motive can be suggested that can justify the refusal of the Comptroller; and if every thing has been fairly transacted by him in that business, obstinacy must with him, on that occasion, have prevailed over a sense of his own interest and *reputation*. 25.

Mr. Nicholson's Answer.

25. " First. This part of the report does not class with any of the heads under which they have, at the beginning of it, arranged the objects of their investigation. From this I wonder it did not occur to themselves, that they were travelling out of their road.

" Second, My reasons for not exhibiting them to the said committee, were, 1st, That they had nothing to do with them. 2d. That although the contrary was expected, I designed, and I think I have not been mistaken, that the examination even of that committee, should operate to my public advantage. To do this it was necessary that all the time remaining (for I did not see them until a good deal of it had elapsed) should be devoted to the objects of their appointment. 3d. I was then in hopes to have been able to have those accounts examined and fully settled, before the time of my trial, so as to have been able, publicly, to exhibit my *quietus* on those accounts, from those authorised to give it—to have submitted them elsewhere, would have interfered therewith, and put it out of my power. True it is, that although they were principally prepared, and a part rendered to and examined, and passed by the United States, yet the disease that put many of us to flight, interrupted and prevented the business. 4th. I will confess I had another motive for refusal, which was this, I found in some of these men a disposition to convert to the uses of this state, at the expence of the United States, property which did not belong to them: before the loan of the United States for state debt, closed, under the specious pretence of examining certain certificates, to find whether all was right, those who were most forward in this business, were in that, and cloaked under that resolution, from the view of the Legislature of this state, who, I think, would have spurned the idea, as well as from the knowledge of the United States, who would, if exposed, have, as they did in the instance of a similar attempt in another state, prevented it—actually subscribed to that loan open to individual creditors

ditors of states, only, certificates of state debt already redeemed by the state*.

* From this it will not be wondered at, that *Pennsylvania* is a debtor, instead of a creditor state, in account with the Union.

—I did not think the attempt would be more unjustifiable, to have seized on this property of the United States, than the other, nor much more unlikely.

“ I subjoin in the schedules, the paper marked (*E.*) which contains a copy of my letter of 27th June, 1793, to the committee;

(*E.*)

“ *Compt. General's office, June 27th, 1793.*

“ GENTLEMEN,

“ HAVING yesterday completed all that appeared wanting on my part at our accounts with the U. States, before the commissioners, I have now more time to devote to your examinations according to your appointment. I have your letters of the 24th and 26th instant before me: and

“ 1st. That it was my wish to divest myself previous to the close of this examination, of all future responsibility as far as possible, that there may be no attempts to excite suspicions against me hereafter, and therefore have preferred delivering over to the Register-General, in case of the state certificates, and taking a credit for the amount receipted for, to your examining them and leaving them in my possession.

“ 2d. It was my wish also, not only to settle my accounts of the certificates of the army, and money which I have received from various persons for their pay; but to divest myself of the trouble and responsibility thereof in future: but it is proper I should settle with those empowered to do it, and quiet me. These I conceive to be the proper officers of the United States; and as the officers of the Treasury of the United States are now as convenient, the party may as well apply there in future, with all their claims, as with a part: and I therefore determined to deliver over to the United States, to whom they belong all the remaining property as aforesaid, not delivered out, on which I consulted and had the approbation of the Governor, and am now making up these accounts, and preparing accordingly, and they will be completed as soon as I can.

“ 3d. I cannot conceive how the delivery of these certificates could be deemed any part of my duty as Comptroller-General, it has no connection with any of the duties of that office. I have so considered it, I always designed and shall obtain a distinct compensation allowed by the United States.

“ 4th. I have been desired by the Secretary of the Treasury of the United States to account and settle as above, who represents that most of the agents have already so accounted, and is desirous that it should
be

be done by all. I have informed him it shall be done, and that acting for *Bowen and Beatty*, I shall also settle all their said accounts in like manner with my own.

“ 5th. I have considered the inclosures of your letter of the 24th inst. none of which I had before seen, except so far as the Acts of Congress were recited, they rather confirm than alter my ideas on the subject. It appears that although the late Supreme Executive of this state were applied to for confirming the choice of the agents made by a meeting of *Pennsylvania* officers, they refused so to do, and not conceiving themselves authorized, they referred it to Congress either to confirm the appointment of those agents, or to appoint such other persons as they thought proper; and Congress, by their Act of the 4th May, 1784, did approve and confirm the choice of those agents made by the officers, whereby they were authorized to act.

I am, &c.

JOHN NICHOLSON.”

The Committee of the House
of Representatives.

—that marked (*F.*) which contains a copy of my letter of 28th June, to the Governor;

(*F.*)

“ S I R,

Compt. General's office, June 28th, 1793.

“ YOUR excellency not having contemplated it as a subject in which any controversy would be involved, and having since more fully before you the question of the disposition of the unclaimed continental certificates in my hands, for the pay of the late army. I am desirous that in your consideration of this subject, no embarrassment should arise from the conversation which was had between us thereon, and therefore consider the case to be in the same situation, as though no such conversation had ever passed.

“ Having thus premised, I observe,

“ First. That I deem myself accountable to the United States, for the delivery of such certificates of this kind as I have issued, and for the balance which they may find unissued, that I am desired by them so to account, and that I am desirous to account without delay in such manner.

“ 2d. That if I even were accountable to the state, the subject does not come within the appointment of the present committee of the House of Representatives, it is certainly no part of my official duty as Compt. General, for the examination of which transactions they were appointed, and in the forwarding of which, I will afford them every aid in my power.

“ I have taken advice on the subject, and have determined,

“ 1st. As to the balance of unclaimed certificates, situated as they are, I will hold them without depositing them with or accounting therefor to either the United States or this state, until a judicial determination shall decide to whom they ought to be delivered.

“ 2d. That I will as soon as I can, settle with the United States, for all the

the certificates and money I received of them, so as to fix what the balance aforesaid amounts to.

“ 3d. I will enter into an amicable suit for the purpose of deciding the first question, on this point I have the agreement of the United States by their proper officer, and I also request the concurrence of your excellency in behalf of the state.

I have the honour to be, &c.

JOHN NICHOLSON.”

His excellency THOMAS MIFFLIN, Esq.

Governor of *Pennsylvania*.

—that marked (G.) which contains a copy of another letter from me to the Governor, in answer to one from him, enclosing the Attorney-General’s opinion.

(G.)

“ SIR,

Compt. General’s office, July 9th, 1793.

“ ON the 3d inst. I received your excellency’s letter of the 1st, covering the opinion of the Attorney-General of the 25th of June last; on this I have to observe,

“ 1st. That this opinion is founded much on matters stated as a fact, which are not so, and which I should have been able to prove, had the matter been put on the issue I proposed.

“ 2d. That admitting the certificates deposited with *Bowen* and *Beatty*, or with *Bowen* and *Rush*, who acted for *Beatty*; or with myself who acted for them both, were to be considered in the same view as those deposited with regimental agents, and therefore within the Act of Congress of Nov. 3d, 1783, subjecting them to the order of the Supreme Executive of the state, that power extends only to enable the Supreme Executive to order them out of the hands of one person or persons, to be deposited in the hands of another person or persons, and declares for what purpose they shall be so deposited, that is to be delivered out by them to the party. But as to the settlement of the accounts, the thing I am anxious to have done, it gives no such power to the executives of the state.

“ 3d. All the books I received from major *Bowen* in behalf of the agents, together with the papers other than the certificates, consist of two large receipt books, orders and vouchers for the delivery of certificates. These are yet unsettled, and will until adjusted by the United States, to whom in their behalf I render them for that purpose, as they have desired, whereby the said account will be closed; the papers I have in this business are also vouchers, such as orders, and receipts for delivery of certificates, which receipts I have generally taken in the said agent’s name, and which must (unless I settle with the agents) be adjusted also with the United States, before the same accounts can be closed, the latter I intend to have done; the other papers respecting the delivery of certificates received from Mr. *Pierce*, are of the same kind, and to be settled in the same way with the United States.

“ 4th. I have been desired by the United States so to settle, and a
part

part of these accounts, with the certificates were rendered, and are now under the examination in the offices, and I presume my duty and honor both will be better pursued and preserved in this way, than in submitting them to those who have nothing to do with them, more than other persons, and by that means be prevented from obtaining a settlement in due time from those legally authorized to do it.

“5th. If the power of *examination* of the *accounts* and *settlement* had been also committed to the Supreme Executives by the Acts of Congress of November 1783, (which was not done) yet still as in all that business, the said executives were merely constituted trustees, the agents would nevertheless be accountable to the United States, the principal at their pleasure. But the organization of the department of the accounts of the United States, by subsequent Acts of Congress, directs the channel in which all such accounts shall be rendered and settled; which will be observed by Sir,
Your excellency’s, &c.

JOHN NICHOLSON.”

His excellency THOMAS MIFFLIN, Esq.
Governor of Pennsylvania.

The paper marked (H.) is an extract from a letter of 25th September, 1793, from Thomas B. Bowen, addressed to me on this subject.

(H.)

Dated Sept. 25th, 1793.

“I REMEMBER, that when I deposited with you the remaining certificates, together with my vouchers for those I had delivered, I considered the latter as entrusted to your care on my behalf, as I by no means looked on you as authorized to give me a full discharge for continental property for which I had receipted to the commissioners of army accounts under Congress. I took from you, not a discharge of my agency—your authority under the state, nor even the state itself, having no such power—but merely an acknowledgment that I had deposited with you all the certificates for which I had not produced receipts for the delivery to the parties to whom they belonged.—How I considered these remaining certificates, which could not in idea be separated from the light in which I considered you, as my agent for settling the accounts of my agency must naturally appear.”

Report continued.

“The committee submit the following resolutions:—

“Resolved, That the Attorney-General be directed to institute a suit against John Nicholson, Comptroller-General for the whole amount of the certificates issued to satisfy certain claims of clothing made in the name of sundry officers, including both the principal and the interest paid by the State. 26.

Mr.

Mr. Nicholson's Answer.

26. " To *this* my answer on the first impulse would be, let the suit be instituted and welcome ; but on more mature reflection, I would observe, 1st. That I am not desirous on my own account of attending a suit, and supporting the expences of it. 2d. I do not wish that the state should be at unnecessary expence in maintaining one, especially as the cause hath been decided already, in the same court where this cause was proposed by the committee of the late House of Representatives to be brought—For as to jurisdiction, the Supreme Court have, as already mentioned, allowed it to have been in me, by assuming it themselves, in the cases of appeal which have been cited ; and as to principles adopted at settlement, they have, at least, sanctioned mine, in favour of the state, by themselves, allowing more. One observation it is natural to make here : These accounts were acted on, and approved both by the Governor and Register-General. If the thing was wrong, the blame should be participated to them, respectively : yet we hear of no resolutions, for a suit against either the Governor or the Register-General. On this I leave candor itself to make reflection.

Report continued.

" *Resolved*, That a committee be appointed to prepare and bring in a bill to provide for the effectual and final settlement of the accounts of *John Nicholson*, Comptroller and Escheator General. 27.

Mr. Nicholson's Answer.

27. " The resolution to provide by a law for the settlement of my accounts, so far as respects Escheator-General, is nugatory ; as such I am not an officer of account ; no public money can pass thro' my hands, either for real or personal estates, escheated or otherwise. I have, therefore, no account as Escheator-General, to settle : As it intends my accounts as Comptroller-General, its design is either to create another office, or it is there also nugatory. By law, the Register-General, as directed by the Executive, hath the power to settle
all

all the accounts of the Comptroller-General; and progress hath been, by him, made therein—However if it is designed to create an additional office, I have no objections to whoever may examine and settle my accounts; and no other to that plan, than, as it may encrease the public expence, which, as a citizen, I must contribute to pay.

Report continued.

“*Resolved*, That a committee be appointed to prepare and bring in a bill to provide for the settlement of the arrearages of taxes due by the several counties and to enforce the collection of the *same*. 28.

Mr. Nicholson's Answer.

28. “This third resolution, not applying, in any wise, to my case, I make no observation upon it.

“It only remains, therefore, for me to assure yourself, and the members of your honorable House, that I am, &c.

JOHN NICHOLSON.”

The Honorable GEORGE LATIMER,
Speaker of the House of Representatives of *Pennsylvania*.

Report continued.

ACCOUNT A.

DR.

*The State of Pennsylvania in account with New-Loan debt.*1st. To amount of original certificates
issued as examined by committee of
Council.....

£.1,937,885	15	3
To error discovered since.....	60	0 0

1st. By amount redeemed by Land-office....£. 118,470

2d. By amount re-exchanged as taken from
the books of New-Loan certificates re-
ceived back from the parties (a).....3d. By the difference between the amount
of renewed certificates as reported by
the committee of Council, and the true
amount as rectified from the certificates
themselves (b).....Balance outstanding not yet re-ex-
changed (c).....

.....	1,118	0	9
.....	33,722	3	0

£.1,937,945	15	3
-------------	----	---

£.1,937,945	15	3
-------------	----	---

(a) This amount includes £.

which have been re-
ceived by the Comptroller, and by him delivered to the
Register, but had not been entered on the books.(b) See the note (g) of the report—the amount of renewed
certificates being greater than committee of Council had re-
ported, and the total amount being thought right, the amount
of original is so much less.(c) £. : part of this sum are the certificates offered for
subscription by John Nicholson and others to the loan of the
United States.

Dr.	B. <i>John Nicholson in account with New-Loan certificates received by him.</i>	Cr.
-----	---	-----

To amount of certificates renewed for which he received at the time of renewals an equal amount of original certificates as taken from books of certificates renewed.....

To amount of certificates redeemed by the Land-Office and delivered him by the Receiver-General

To amount of certificates re-exchanged and by him received of parties in exchange for continental certificates returned to them, as taken from books of New-Loan certificates returned (See Account A.)

Balance arising from some mistakes not yet discovered.....

£. 478,349 15 11

118,470 6 6

1,784,635 5 0

455 2 1

By total amount of certificates cancelled and delivered to the Register-General, the far greater part of which were delivered in the present month of August. £. 2,381,910 9 6

£. 2,381,910 9 6

£. 2,381,910 9 6

DR.	C.	John Nicholson his account with Continental certificates received upon loan.	CR.
To amount of Continental certificates received as rectified by the committee of Council.....	Dolls. 90ths. 5,172,881 50	By differences between the amount of Continental certificates received on loan and the amount of original New-Loan certificates issued, arising, in part, from a number of Continental certificates received on fundry accounts by the Comptroller for the state, and entered on the books of Continental certificates received on loan, to wit—	Dolls. 99ths.

By account A the amount of original New-Loan certificates issued as reported by Council and the error of 6ol. rectified 1,937,945 15 3

From which deduct the difference mentioned in the said account, head 3d, of credit.....1,118 0 9

Total amount of original New-Loan certificates£.1,936,827 14 6

Amount carried over.....Dolls. 5,172,881 50

Dr.			Cr.
	John Nicholson his account with Continental certificates received upon loan—continued.		
	Amount brought forward.....Dolls. 5,172,881 50	Equal to dollars.....5,164,873 84	
		Which deducted from amount of Continental certificates received as per contra.....5,172,881 50	8,007 56
		For which dolls. 8,007 $\frac{56}{100}$ he is charged in his account D.	
		By New-Loan certificates redeemed by the Land-office, an amount equal to which he is charged in his account D, 118,470l. 6s. 6d. equal to.....315,920 78	
		By amount of certificates returned to parties, to wit—	
		Amount of books of Continental certificates returned Dr. Difference between the same and the books of New-Loan certificates received, and for which he must be credited, having delivered the same to the Register-General.....4,759,027 30	
		By amount of certificates yet in his possession and not exchanged.....81,384 11	
		Balance due by him.....8,541 55	
		Dolls. 5,172,881 50	

Dr.	John Nicholson his account with interest upon New-Loan and Continental certificates.	Cr.
To the interest paid upon certificates of New-Loan debt, for which he has received an equal amount in Indents or 3 per cent. stock as taken from the indorsements on the same, viz. 1st. 4 year's interest on certificates returned on exchange amounting to £. 1,784,635 5 as per account B... £. 428,312 9 1 Deduct so much which appears to be wanting to complete the 4 years—about.....2,000 0 0	By amount of indents paid the United States in part of requisitions £. 82,678 : 0 : 6 equal 220,474 75 By amount of interest due upon the certificates paid to the United States in payment of the Lake Erie tract.....59,762 1 By amount of interest due upon the certificates delivered to the State Treasurer.....460,925 63 By Indents delivered to do.....843,851 33 By Three per cent. Stock transferred to do. by Comptroller.....68,487 9 By do. do. transferred by parties, in lieu of indents due by them upon exchange of New-Loan certificates.....35,641 75 By do. do. do. till February, 1793.....1,868 80 By do. do. arising from the subscription in trust for Sarah Caldwell and others 2,051 49	Dolls, Cts, 220,474 75 59,762 1 460,925 63 843,851 33 68,487 9 35,641 75 1,868 80 2,051 49
2d. Interest paid on £. 118,470 : 6 : 6 redeemed by Land-Office as calculated by Register.....15,725 15 0 £. 442,038 4 1	<i>All the above sums were paid before the appointment of the committee.</i>	
Carried over,.....Dolls. 1,178,768 49	Carried over,.....1,693,062 85	

Dr. <i>John Nicholson his account with interest upon New-Loan and Continental certificates—continued.</i>		Cr.	
Brought forward.....	Dolls. 1,178,768	49	1793, June 10.
To interest by him received on the Continental certificates corresponding with that part of the New-Loan debt yet outstanding, to wit:—			By three per cent. stock and indents paid the Treasurer.....
1st. Indents received by him on Continental certificates in his possession as examined by committee	Dolls. 5,032	75	By three per cent. stock bearing interest from 1793, assigned by parties in lieu of indents.....
2d. 4 year's interest he is accountable to the states on the balance of	8,541	55	Balance for which the Comptroller must account.....
Continental certificates received on loan.....	2,049	86	
To interest accrued upon the Continental and New-Loan certificates redeemed by Land-office till 31st of December, 1790		7,082	71
To interest upon sundry other certificates, to wit—		575,670	3
Woods, Thompson and Scott's.....	D. 212	22	
Atlee's.....	232	43	
Carried over.....	444	65	
		1,761,521	23
			Amount carried over.....
			D. 1,769,644
			$\frac{1}{10}$

The Impeachment, Trial, and Acquittal

DR.	John Nicholson his account with interest upon New-Loan and Continental certificates—continued.	CR.
	Brought forward.....444 65	Amount brought forward.....1,769,644 $\frac{11}{16}$
	Wade's.....3,781 69	
	Sundries given by officers	
	as per account.....2,077 29	
	To arrearages of interest given up by parties upon the exchange of New-Loan certificates.....879 34	
	To interest upon the balance of D. 3,914 37	
	deficient in his account of continental certificates received for state—say 4 years.....939 51	
	<u>Dolls. 1,769,644 11</u>	<u>Dolls. 1,769,644 $\frac{11}{16}$</u>

N

F.

DR.	Accounts of State-Treasurers in account with interest ended as paid on New-Loan certificates.	CR.
1793,	By so much paid upon New-Loan certificates re-exchanged as taken from endorsements £.426,312 9 10	
January 1st.	To so much charged in their accounts as having been paid to this date.....£.461,730 0 11	By do. upon do. redeemed by Land-office.....15,725 15 0
		By four years interest supposed to have been paid on £.33,722 3 balance of New-Loan certificates outstanding.....8,093 6 4
		Balance deficient, either overcharged in the Treasurer's accounts or actually paid, but neglected to be endorsed on the certificates.....11,598 9 9
	<u>£.461,730 0 11</u>	<u>£.461,730 0 11</u>

D.R.

To total amount of depreciation of the pay of the Pennsylvania line and others entitled to the same by laws or resolutions of the state—Amount unknown,

To total amount of depreciation of the pay of the Pennsylvania line and others entitled to the same by laws or resolutions of the state—Amount unknown,

G.

State of Pennsylvania in account with the late Pennsylvania line, &c. for depreciation of their pay.

C.R.

By shilling money paid upon settlement of accounts by the Commissioners appointed for that purpose and others, to wit—

Paid by David Rittenhouse.....	£.1,457	10	0
Do. by Dean, Morris, and others.....	14,278	7	6
Do. by Fowler and Amberson	5,514	13	8
Do. by J. Stevenfon.....	1,683	15	0
Do. by John Nicholson, as Auditor	16,829	3	11
Do. by John Nicholson, as Comptroller, to wit, To 11th Nov.			
1782, ..£. 13,312	12	8	
To 19th			
do. 1783, ..8,287	10	0	
To—1787, 6,669	4	1	
	28,299	6	9
			68,062 16 19

By certificates granted upon settlement, to wit, Issued by Auditors

Carried over.....68,062 16 19

State of Pennsylvania in account with the late Pennsylvania line, &c. for depreciation of their pay—continued. Cr.

Brought forward.....	£. 68,062	16	10
previous to the Comptroller's appointment to that office.....	380,952	18	7½
Do. by John Nicholson, as Comptroller.....	122,717	7	8
By escheated to the commonwealth as per list annexed, furnished the Secretary of the commonwealth.....	503,670	6	3½
	42,293	4	4½
	£. 614,026	7	6

H.

State of Pennsylvania in account with Depreciation certificates.

Dr.

Cr.

To total amount of original certificates issued £. 503,670	6	3½
Amount carried over.....	503,670	6 3½
By so much paid in shilling money in part of the certificates, new ones having issued for the remainder, to wit—		
Paid by Jas. Stephenson £. 29,379	14	2
Do. by Fowler & Amber-son.....	803	17 8
Do. by John Nicholson, as Auditor.....	31,410	15 4
Carried over.....	61,594	7 2

Dr.

State of Pennsylvania in account with depreciation certificates—continued.

Amount brought forward.....£.503,670 6 3½

Brought forward £.61,594 7 2

Do. by John Nicholson, as
Comptroller, to wit—

To 11th

Nov. 1782, 5,308 15 0

To 19th

Nov. 1783, 4,184 12 10

To Nov.

1787,.....5,232 13 4

14,726 1 2

By following certificates stopt by, or delivered to, the Comptroller—

Christie's.....697 3 3

* Ryan's.....545 12 6

Forrest administ. for — 102 0 5

Hardie.....261 2 0

The certificate marked thus * may possibly be
induced under the next head.

By errors discovered and recovered by the

Comptroller by taking the original certificates

and issuing new ones to a less amount, ... 5,051 12 1½

By certificates redeemed by the Land-office

and delivered the Comptroller.....116,916 0 10½

Amount carried over.....£.503,670 6 3½

Carried over.....£.199,893 19 6½

DR.

State of Pennsylvania in account with Depreciation certificates—continued.

CR.

Amount brought forward.....£.503,670 6 3½

Brought forward.....	199,893 19 6½
By do. do. for forfeited estates and delivered do.....	51,600 8 11
By do. do. for do.....do.....	297 19 0
By do. redeemed by Land-office delivered to Treasurer.....	28,309 9 1
By do. do. for forfeited estates do. do.....	298 3 4
By do. subscribed to the loan of the United States for the funded part of which additional <i>purparts</i> were issued.....	175,495 16 5
By do. subscribed to do. and redeemed under Act of 10th April, 1792.....	17,698 15 8½
By do. do. to do. and do. under Act of 9th Feb. 1793	1,810 3 4
By do. redeemed (being unassumable) under Act of 10th April, 1792.....	22,239 14 8
By do. do. (do.) under Act of 9th Feb. 1793	315 12 0
1793, <i>March</i> 1st. Balance outstanding.....	5,710 4 3¾
	£.503,670 6 3½

£.503,670 6 3½

The real balance is probably something larger on account of Ryan's certificate above mentioned, and of a sum of £. which possibly has been credited twice in the account. The whole difference would be £.

I.				CR.			
DR.				John Nicholson in account with Depreciation certificates by him received.			
To amount of certificates renewed (a) . . .	£. 620,865	11	1	By certificates renewed and charged to him per contra the original of which being lost and renewed by special resolutions were not received by him	£. 2,833	14	4
To amount of shilling money paid in part of Depreciation certificates	76,320	8	4	By amount cancelled and delivered the Receiver	875,375	7	0 $\frac{1}{4}$
To certificates stopt or delivered	1,605	18	2				
To errors discovered in settlement by Auditors	5,051	12	1 $\frac{3}{4}$				
To certificates redeemed by Land-office	116,916	0	10 $\frac{1}{2}$				
To do. do. for forfeited estates	51,898	7	11				
Balance in favour of John Nicholson	5,551	2	10				
	£. 878,209	1	4 $\frac{1}{4}$		£. 878,209	1	4 $\frac{1}{4}$
(a) The amount of certificates renewed by Auditors and Commissioners or Treasurer prior to the appointment of the Comptroller-General is				149,042	3	11 $\frac{1}{4}$	
The amount issued since by him is				471,823	7	1 $\frac{3}{4}$	
	£. 620,865	11	1				

K.

Dr.			Cr.		
<i>State of Pennsylvania in account with certificates commonly called "Funded debt."</i>					
1792, April 4.	To total amount issued.....	£. 229,638	7	8½	
	By certificates redeemed by Land-office and delivered the Comptroller.....	£. 24,394	9	6	
	By do. received for militia fines by the Comptroller.....	868	13	8	
1793, March 4.	By certificates redeemed by Land-office and delivered the Treasurer....	31,540	17	1	
1791, Octob. 1.	By do. subscribed to loan of United States, for which additional certificates called <i>purparts</i> were issued by State.....	71,108	17	6	
1792, Aug. 1.	By do. subscribed to do. & redeemed under Act of April 10th, 1792.....	10,136	10	10	
1793, March 1.	By do. do. to do. and redeemed under the Act of Feb. 9th, 1793.....	2,577	6	0	
1793, Jan. 1.	By do. redeemed (being unaffumable) under Act of April 10th, 1792.....	71,284	8	8	
March 1.	By do. do. (do.) under Act of Feb, 9th, 1793.....	1,014	0	9	
	Balance unredeemed.....	16,713	3	8½	
			£. 229,638		
			7	8½	

Dr. State of Pennsylvania in account with certificates commonly called "Funded debt"—continued. — Cr.
 Balance per contra.....16,713 3 8 $\frac{3}{4}$ By certificates in the possession of the Comptroller, to wit—

1793,
June 10. Certificates never
 delivered out.....5,544 4 7
 Do. given to individuals to
 be by them delivered to
 the proper parties and by
 them returned.....2,317 0 8

Balance actually in circulation.....7,861 5 3
 8,851 18 5 $\frac{3}{4}$

£.16,713 3 8 $\frac{3}{4}$

£.16,713 3 8 $\frac{3}{4}$

Part of the above £.8,851:18:5 $\frac{3}{4}$ (being issued for clothing and caveated) are still in the hands of the Register-General.

L.

John Nicholson his account with certificates commonly called "Funded debt."

Cr.

Dr.

To certificates renewed.....£.143,031 12 9 By amount delivered to the Register not yet
 To do. redeemed by Land-office.....24,394 9 6 added, but the whole said to be delivered.
 To do. paid for militia fines.....868 13 8
 To certificates not yet issued and in his pos-
 session.....7,861 5 3

£.176,156 1 2

Report concluded.

SEPTEMBER 3.

THE additional articles of impeachment were read the second time—Major *McConnell* appeared at the bar of the House, and being duly sworn, answered the following interrogatories.

Question by Mr. Gallatin. Have you been possessed of any New-Loan certificates in the year 1788?

Answer. I had a quantity of New-Loan certificates about that time, but at present cannot ascertain their amount or numbers.

By the same. Did you sell a certificate of that description amounting to £. 3275 : 19 : 4 to *Blair McClenachan*, if yea, please to tell at what time?

Ans. It appears from my book, that I delivered such a certificate to Mr. *McClenachan*, the 23d day April, 1788, which had been issued in my own name. I delivered him many New-Loan certificates about that time.

Ques. by Do. Do you know what he did with that certificate whose amount was £. 3275 : 19 : 4, did he sell it, or did he exchange it?

Ans. Impossible for me to tell what Mr. *McClenachan* had done with it, the certificate was his own after he got it from me. I believe an exchange took place between him and the Comptroller-General, but in this I am not positive.

Question by Mr. Evans. Have you a list of the names of the persons to whom the certificates which you then had, were originally granted?

Ans. I have a book at home, in which I have entered their amounts, &c. but at this time I cannot be particular.

Ques. by Mr. Gallatin. Had you any other New-Loan certificate of the same amount issued in your name, about that time, before that time, or since that period?

Ans. Not likely that I should have another of the same amount in my own name, it is impossible for me to ascertain.

Question by Mr. Evans. Can you tell the number of that certificate, for £. 3275 : 19 : 4 ?

Ans. I cannot ascertain it, not having the No. of that one in my book.

Ques. by Mr. Gallatin. Can you ascertain the time when this certificate was issued, and whether it was an original one, or issued for a number of certificates, commonly called *consolidating* ?

Ans. I am inclined to think it had been issued in exchange for others by the means last mentioned : but I am not certain as to that, nor to the time when issued.

Mr. Gallatin observed he had no more questions to ask, and that the witness might retire.

Ques. by Mr. Evans. Can you furnish us with a list of the names of the persons to whom issued, numbers, dates and amounts of the certificates which you delivered to *Blair M'Clenachan* about the time alluded to ?

Ans. I have a book, from which I will extract such dates, numbers, and amount as far as I have entered them, and will transmit a list to the House as soon as possible.

After which the witness retired.

Whereupon it was resolved that the further consideration of the said additional articles of impeachment be postponed till the next day.

And the Speaker issued his summons to accelerate the attendance of *Blair M'Clenachan* to give testimony on these articles against Mr. *Nicholson*.

It was on motion, Ordered that Messrs. *Morgan, Evans* and *Gallatin*, the three managers, should procure attested documents from Mr. *Thomas Smith*, Commissioner of Loans, to answer the purposes of evidence on these articles against the Comptroller.

The committee got no documents from him, at that time, he was in the country for fear of the yellow fever
which

which then raged in the city, and carried off about 18 persons per day.

Three gentlemen, were appointed a committee by the Senate on the 2d to confer with a committee from the House of Representatives on the expediency of an adjournment of the Legislature.

The House of Representatives appointed five members to join the committee of the Senate.

SEPTEMBER 4.

THE committee appointed to confer with a committee of the Senate on the expediency of an adjournment of the Legislature, made report; which was read, as follows, viz.

That in the conference held by your committee with the committee of the Senate, they declared that they did not conceive that the House of Representatives would be ready to take a question upon the expediency of an adjournment until they knew what time was fixed by the Senate for the trial of the charges brought by the House against *John Nicholson*, Comptroller-General—Your committee thought it their duty also to mention, that although the House could not controul the decision of the Senate on that point, yet, they knew, they were ready at any time to support the charges and desirous that the trial should come on immediately, to which they added several reasons to urge the propriety of a decision on that business taking place at this session of the Legislature.

Your committee submit the following resolution—

Resolved, That the Senate be requested to fix the time at which they mean to try the charges brought by the House of Representatives against *John Nicholson*, Comptroller General, and to give notice thereof to the House.

Ordered to lie on the table.

Mr. *Edie*, a committee from the Senate, being introduced, presented to the chair an Extract from the

Journal

Journal of that House; and having withdrawn, the same was read, as follows, viz.

“ In SENATE, TUESDAY, *September 3, 1793.*

“ On motion of Mr. *Morris*, seconded by Mr. *Thomas*,

“ *Resolved*, That the Legislature will rise to-morrow. And

“ *Ordered*, That Mr. *Edie* be a committee to present the foregoing Resolution to the House of Representatives for concurrence.

Extract from the Journal,

TIMOTHY MATLACK,
Clerk of the Senate.”

The committee of accounts reported, a resolution, that a warrant be drawn in favour of *Benjamin R. Morgan* for 492 dollars and 75 cents, being a balance due the committee of investigation for their services and expences.

Agreeably to the order of the day the additional articles were read the third time and adopted, and it was ordered that they should be engrossed and signed by the Speaker.

Mr. *Blair M'Clenachan* having been summoned previous to the third instant, when Mr. *M'Connell* gave his evidence, and not appearing, a motion had been made to compel his attendance by an attachment, whereupon some argument had ensued, and it was conceded, that he did not absent himself thro' contumacy, but through a belief and expectation that the General Assembly had adjourned on account of the disorder, consequently no further notice had been taken of his non-attendance.

He appeared this day, and had been sworn.

Question by Mr. Evans. Did you purchase or receive any New-Loan certificates from *Matthew M'Connell*?

Answer. I did, to a great amount.

Ques. by ditto. To what amount were any of these certificates, or do you recollect any New-Loan certificate

cate received from him to be for the sum of 3275l. 19s. 4d.?

Ans. I remember to have had several.

Ques. Has there been any such in your name, or in the name of Mr. M^cConnell?

Ans. My name! Mr. M^cConnell's name!

Here the witness appeared somewhat embarrassed, not knowing the drift of the question.

Mr. Gallatin rose, and said he would put the witness right, saying, "I will mention a circumstance, Do you remember that a large New-Loan certificate had been issued about the time alluded to, for the sum of £. 5000 or thereabouts; that the said certificate had been cancelled the next day, and two certificates issued in lieu thereof, the aggregate amount of which was £. 5000, as aforesaid; that one of these certificates had been for £. 3275 : 19 : 4, and the other for the balance, do you remember any of these circumstances?"

Ans. I perfectly recollect that circumstance, and that I purchased the larger certificate, which was for 3275l. 19s. 4d, I believe.

Question by Mr. Evans. Did you at any time sell that certificate, or any other of the same kind?

Ans. Not to my knowledge, I do not remember.

Question by Mr. Gallatin. Do you remember to have sold that large certificate at any time, or to have exchanged it; if you have, please to tell to whom, and what did you receive for the same?

Ans. I delivered it to the Comptroller-General to get an equivalent in continental certificates, as well as I can remember;—

Question by Mr. Hare. At what time did this transaction take place?

Before the witness had time to answer this question, Mr. Gallatin said he would mention a circumstance which probably would put the witness right, and observed by saying, "Do you recollect having certificates which were issued between the 1st of Sept. 1777 and 1st March, 1778, and that the holders were displeased at
parting

parting from these certificates on the same terms, and conditions as they parted from the New-Loan certificates?"

Ans. I perfectly recolled that circumstance, and that I did not part from those certificates, of which I had been possessed, when I exchanged my New-Loans.

Ques. by Mr. Gallatin. When Mr. *M'Clenachan* had subscribed the New-Loan certificates, did he, or did he not subscribe those which had been issued between the 1st September 1777, and the 1st of March 1778?

Ans. No, I kept them to the last.

Ques. by ditto. Did Mr. *M'Clenachan* receive an equivalent in continental certificates from the Comptroller for the last described certificate for £. 3275 : 19 : 4, or did he (Mr. *M'Clenachan*) subscribe it in his own name to the Loan of the United States?

Ans. I received an equivalent in continental certificates, as well as I can recollect, for all that I brought to the Comptroller's office.

Ques. by Mr. Hare. Can Mr. *M'Clenachan* ascertain the time when this transaction happened?

Ans. A short time before the Loan was closed.

Ques. by Mr. Forrest. Did Mr. *M'Clenachan* sell any certificates to the Comptroller-General, or to any other person?

Ans. I never sold any, I delivered all that I had to the Comptroller-General, and received continental certificates in lieu of of them.

Retired.

After the foregoing ceremony of adopting the two additional articles, the report of the joint committee on the subject of adjournment was read the second time, and *Resolved*, that the Senate be requested to fix the time at which they mean to try the charges brought by the House of Representatives against the Comptroller, and to give notice thereof to the House.

A letter from Mr. *Matthew M'Connell* was presented to the chair, the reading of its enclosure dispensed with,
and

and it was referred to the committee appointed to manage the trial against Mr. *Nicholson*.

The enclosure was a list of New-Loan certificates delivered by him to Mr. *M'Clenachan*, in the years 1788 and 1789, amounting in the whole to £. 16035:11:5.

An improper statement of Mr. *M'Connell's* evidence appearing in one of the daily papers, he wrote the following letter to the printer which was published in the same paper.

Philadelphia, Sept. 4, 1793.

“MR. DUNLAP,

“I AM sorry to find myself under the necessity of contradicting a statement in your paper of this morning of the evidence said to be given by me before the House of Representatives yesterday on “the subject of the Comptroller-General's accounts.” The statement says, That my Testimony went to prove, that I had sold a certificate for upwards of ten thousand dollars, to Mr. *Blair M'Clenachan*, which afterwards appeared to have been negotiated by the Comptroller-General in some manner that was not strictly agreeable to the literal meaning of the law.”

“A regard for truth obliges me to say, that my evidence went no farther, than that I had delivered *certain* New-Loan certificates to Mr. *M'Clenachan*, in the year 1788.

MATTHEW M'CONNELL.”

The two additional articles were brought in engrossed; were compared at the table, signed by the Speaker, and sent to the Senate by five members; one of this committee addressed the Senate in the same words as those published page 108.

Captain *Duncan*, the chief Clerk in Mr. *Nicholson's* office wrote the following letter.

“SIR,

Sept. 4, 1793.

“HAVING been present in your honorable House when the late resolution passed, respecting the Comptroller-General, citing him to appear, &c. &c. I beg leave

leave to inform the House that Mr. *Nicholson* is out of town with his family, but should there be a necessity for his appearance to take trial, I will undertake to say, that an express shall bring him here in a few hours. I am, &c.

JAMES DUNCAN."

The Hon. SAMUEL POWELL, Esq.

Speaker of the Senate.

SEPTEMBER 5.

THE Speaker drew a warrant for 300 dollars in favour of Mr. *Morgan*, to be paid as retaining fees to Messrs. *Wilcocks*, *Rawle*, and *Ingersoll*, as Counsel for the State on the impeachment of the Comptroller-General.

The Clerk of the Senate being introduced, presented to the chair certain extracts from the Journal of that House; and having withdrawn, the same were read, as follow, viz.

"In SENATE. WEDNESDAY, *September 4, 1793.*

"On motion of Mr. *Morris*, seconded by Mr. *Hanna*,

"*Resolved*, That *John Nicholson*, Comptroller-General of the commonwealth of *Pennsylvania*, do appear at the bar of the Senate forthwith, to make answer to certain articles of accusation and impeachment, exhibited against him by the House of Representatives.

"*Ordered*, That the Sergeant-at-Arms do forthwith serve *John Nicholson*, Comptroller-General of the commonwealth of *Pennsylvania*, with a certified copy of the foregoing resolution.

"*Frederick Snider*, Sergeant-at-arms, on the resolution given in charge to him as aforesaid makes return in the words following, to wit—

"A Copy of the within resolution of the Senate I have delivered to *Eleanor Baltzner*, servant, at the house of
John

John Nicholson, Comptroller-General of the commonwealth of *Pennsylvania*, this afternoon, he the said *John Nicholson*, not being to be found.

So answers,

FREDERICK SNIDER,
Sergeant-at-Arms"

Wednesday, September 4, 1793.

" Moved by Mr. *Morris*, seconded by Mr. *Thomas*,

" Whereas it appears from the return of the Sergeant-at-Arms of the Senate to their order, for the appearance of *John Nicholson*, at the bar of the Senate, that the said *John Nicholson*, is not to be found—And whereas the absence and indisposition of many of the members of the Senate, and the anxiety and alarm occasioned by the existence of a malignant and infectious fever in this city, render it inexpedient to use any further process on the articles of impeachment exhibited against *John Nicholson*, Comptroller-General of the commonwealth, during the present session; therefore,

" *Resolved*, That any further process or proceeding therein be postponed to the next session of the Legislature.

The question being put, was carried in the affirmative.

Extract from the Journal,

T. MATLACK,

Clerk of the Senate."

The Legislature adjourned *sine die*.

DECEMBER 3, 1793.

THE Legislature met according to the provision for that purpose in the Constitution.

DECEMBER 5.

MR. *Nicholson* wrote the following letter to the Senate:—

B b

" S I R,

“SIR,

Decem. 5th, 1793.

“I LEFT the city with my family on the 31st August last on account of the late malignant disease in *Philadelphia*, and returned to the neighbourhood of it without venturing in, but had employed an Express to be sent out to me, that I might attend if wanted to appear before your honorable House. Mr. *Duncan*’s letter on this subject read in Senate the 4th Sept. and the postponement of the business on the same day, prevented my being sent for, and appearing as directed by the resolution of that date—I beg leave to inform the honorable House, that I am now ready to appear and answer to the Articles of Impeachment when it shall please the Senate. I am, &c.

JOHN NICHOLSON.”

The Hon. ANTHONY MORRIS, Esq.

Speaker of the Senate of *Pennsylvania*.

DECEMBER 14.

THE lower House resolved to take into consideration the state in which the Impeachment of *John Nicholson*, was left at the close of the late session.

DECEMBER 20.

AGREEABLY to the order of the day, the House resolved itself into a committee of the whole, in order to take into consideration the Resolution proposed by Mr. *Evans*, seconded by Mr. *Tyson*, relative to the impeachment of *John Nicholson*, Comptroller-General, by the late House of Representatives.

Mr. Speaker left the chair, and Mr. *Wynkoop* was placed therein.

After some time spent in the business,

The Chairman left the chair and the Speaker resumed it.

The

The Chairman then reported a Resolution, which was read,

And on motion, and by special order, the same was read the second time, and adopted, as follows, viz.

Resolved, That it appears that the impeachment by, and in the name of the House of Representatives, and in the name of the People of *Pennsylvania*, for sundry High Misdemeanors, is now depending against *John Nicholson*, Comptroller-General of this commonwealth.

On motion of Mr. *Swanwick*, seconded by Mr. *Evans*,

Resolved, That managers be appointed on the part of this House to conduct the prosecution of the impeachment of *John Nicholson*, Comptroller-General of this commonwealth.

Ordered, That Mr. *Swanwick*, Mr. *B. Morgan*, Mr. *McLene*, Mr. *Evans*, and Mr. *Bowman* be a committee for that purpose.

On motion of Mr. *Evans*, seconded by Mr. *J. Shoemaker*,

Resolved, That the Attorney-General and such other counsel as the managers may think proper, be requested to give their attendance at the trial aforesaid, and assist thereat on behalf of the House of Representatives.

DECEMBER 24.

THE committee appointed to manage the trial were authorized to send for persons and papers, and to examine witnesses upon oath or affirmation.

JANUARY 9, 1794.

MR. *Nicholson's* long letter was presented to the Speaker of the House of Representatives—which see from page 111 to page 169, mixt with the Report of the Committee of Investigation.

Agreeably

Agreeably to notice given him, he came to the Senate at a quarter of an hour before noon, the Speaker informed the Senate that the hour was approaching when it should be necessary for him to direct the Sergeant-at-Arms to acquaint *John Nicholson*, Esq. Comptroller-General of the commonwealth that he should appear before the Senate to answer the charges or articles of impeachment exhibited against him by the late House of Representatives.

A motion was made by Mr. *Hoge*, seconded by Mr. *Kennedy*, that the Senate should adjourn their Legislative business, in order to assume their judicial capacity, some authorities were cited to establish this on the same footing as the *British* house of lords adjourn from the Parliament-house to Westminster hall to sit in their judicial capacities on similar occasions. Messrs. *Bingham* and *Smith* were against that mode, the latter said he hoped the Senate would not adjourn, for he observed that if they should adjourn, there would be no Senate: Mr. *Hoge's* motion was put and negatived.

Mr. *Bingham* then moved that the Sergeant-at-Arms be directed to notify Mr. *Nicholson* to walk in. The motion was agreed to, the Comptroller walked in, being unattended by any person, bowing to the chair, and then to the persons on the right hand, and on the left.

A table covered with green cloth, and a chair was placed in the middle of the Senate-chamber opposite the Speaker's chair, to which Mr. *Nicholson* was shewn by one of the gentlemen of that body, and he was desired by Mr. *Bingham* to sit down; the Clerk of the Senate read the articles of impeachment together with a resolution of the House of Representatives respecting an error in the said articles—The ceremony of reading these documents, being over, Mr. *Nicholson* rose from his seat, and the Speaker asked him "what he had to say." Mr. *Nicholson* answered, "that he wanted a copy of the articles, and time to put in his answer to them." Mr. *Nicholson* was requested to repeat his demand

mand, for the Speaker and other Members did not hear him, a sudden motion of feet in the gallery preventing them: Mr. *Nicholson* in a voice considerably raised, repeated his request.

Whereupon the Speaker desired him to mention his time.

Mr. *Nicholson* answered, and said, "that to indulge his *own feelings* he should mention a very short day, but unfortunately for him his counsel were engaged in the Supreme Court, now in session; that the Attorneys on the opposite side were likewise engaged in the same court, but that he required only till Wednesday (the fifteenth) next to put in his answer."

Mr. *Bingham* moved that Mr. *Nicholson* be permitted to withdraw whilst the Senate were deliberating on the question. The motion was agreed to. Mr. *Nicholson* withdrew on being told by the Speaker that he might do so.

Mr. *Kennedy* remarked, that altho' he was for the adjournment, he was against mentioning any thing respecting the last vote, *i. e.* granting Mr. *Nicholson* permission to withdraw, for he looked upon that as very improper, inasmuch as that officer enjoyed every privilege of going *where*, and of doing *what* he pleased, he therefore hoped that no mention would be made of it on the Journal of the House; a suspension from office being all that the Senate had in their power.

Mr. Speaker put the question whether the Senate were agreed to allow Mr. *Nicholson* his request; and they were unanimous in their assent.

Mr. *Bingham* moved that the Sergeant-at-Arms be directed to request him to walk in, and to hear the determination of the Senate. This motion was agreed to, Mr. *Nicholson* appeared, and the Speaker informed him that his request was granted by the Senate.

After which Mr. *Nicholson* withdrew. The whole time occupied in this ceremony did not exceed 45 minutes, during the time that officer stood this sudden, and novel shock with firmness and propriety.

JANUARY

JANUARY 15.

MR. *Nicholson*, attended by two of his Counsel, at the hour of twelve, went to the Senate, put in his answer to the articles of impeachment, and named his Attorneys; whereupon Wednesday the 19th February, was appointed by the Senate for trying the charges.

On motion of Mr. *Evans*, of the House of Representatives, seconded by Mr. *Tyson*, and read, as follows. viz.

Resolved, That the committee, or any member thereof, to whom was referred the report of the committee appointed to examine during the recess of the late House of Representatives, the accounts and official transactions of the Comptroller-General, shall have power to examine at all seasonable hours, all the books, accounts, vouchers, certificates, and official documents whatever, which may be in the custody of the said Comptroller-General, the Register-General, or the State-Treasurer; to take copies of the same or any part thereof, and to require any explanation concerning the same.

FEBRUARY 5.

THE House of Representatives agreed to a replication to the answer of the Comptroller, to the articles of impeachment, and appointed a committee of five members to present the same to the Senate.

FEBRUARY 15.

The committee of accounts of the House of Representatives, reported 100 dollars to be due to the Door-keeper of the committee of investigation for attending
on

on them during the recess, a small sum for their newspapers, stationary, &c.

Six hundred dollars were voted to be given to the three Attorneys concerned in managing the prosecution against the Comptroller-General.

FEBRUARY 19.

THIS being the day appointed for the trial of the Comptroller. The same came on in the Senate-chamber, and was postponed to the 26th; in consequence of a letter signed by *William Lewis* and *Jared Ingersoll*, Esqrs. and directed to the Speaker of the Senate, requesting a postponement of the trial on account of court business.

The House of Representatives appointed a committee of five members to prepare and report such rules, as in their opinion, ought to be observed, in conducting the trial of the articles of impeachment against the Comptroller-General, and then *depending* before the Senate.

FEBRUARY 20.

THEY resolved to hire an additional Attorney.

FEBRUARY 25.

THE committee appointed to manage on the part of this House the prosecution of the trial of the articles of impeachment against *John Nicholson*, reported, That the Senate postponed the trial of the said articles from Wednesday the nineteenth instant until Wednesday the twenty-sixth instant.

The committee appointed for the purpose, February 19th instant, made report; which was read,

And

And on motion and by special order, the same was read the second time, and adopted, as follows, viz.

The committee appointed to prepare and report rules to be observed on the part of this House, on the trial of the articles of impeachment against *John Nicholson*, now depending before the Senate, do agree to the following resolutions for consideration and adoption of the House.

Resolved, That the House of Representatives will set at such time and times as the Senate may fix, for proceeding upon the trial of the articles of the impeachment of *John Nicholson*, resolve itself into a committee of the whole House, and in that capacity attend in the Senate-chamber during the said trial.

Resolved, That the committee appointed to manage the said trial on the part of this House, do report from time to time the progress that shall be made therein, and the final determination of the Senate thereon.

IN the morning of Wednesday the 26th February, the House of Representatives of the commonwealth of *Pennsylvania* met pursuant to adjournment: the following letter was presented to the *Speaker*.

“ *Comptroller-General’s Office, Feb. 25, 1794.*

“ S I R,

“ BY a resolution of the late House of Representatives of *Pennsylvania*, of the 9th of April 1793, it was agreed, that I should at my request be furnished with copies of such of the papers therein referred to as I should desire; a part then requested and which hath been since repeated, have not yet been furnished. I pray that the present House would direct that it should be done.

“ Also that I be furnished with a copy of the depositions or interrogatories of *John Oldden*, *Matthew M’Connell*, and *Blair M’Clenachan*, who, I find gave testimony
before

before the late House on the subject of my impeachment. With great respect, &c.

JOHN NICHOLSON."

The Hon. GEO. LATIMER, Esq. }
Speaker of the House of Re- }
presentatives of *Pennsylvania*. }

The Clerk then informed the House that he had furnished the Comptroller-General with copies of such papers as were in his possession, and some of those papers alluded to in the Comptroller-General's letter, were presented to the committee appointed to manage his trial before the Senate, and consequently were not in the power of the Clerk of this House.

A motion was made by Mr. *Bowman*, seconded by Mr. *Kelly*, and adopted, as follows, viz.

Resolved, That the Speaker be authorised to draw a warrant for three hundred dollars in favor of *Samuel Dexter*, Esquire, employed as Counsel on behalf of the commonwealth, to assist in the prosecution and trial of the impeachment of *John Nicholson*, Comptroller-General of the commonwealth of *Pennsylvania*, now depending before the Senate; whereupon,

The Speaker signed a warrant for three hundred dollars in favor of the said *Samuel Dexter*, Esquire,
MEMBER OF CONGRESS FROM MASSACHUSETTS.

At a quarter before 12 o'clock the Senate ordered their Sergeant to call the court, which he did by reading the following words—

"O yes! O yes! O yes! Whereas charges of high misdemeanors have been exhibited by the House of Representatives of the commonwealth of *Pennsylvania*, in the name of themselves, and of the people of *Pennsylvania*, against *John Nicholson*, Comptroller-General of said commonwealth; all persons concerned may give their attendance and they shall be heard."

The members of the House of Representatives attended; Mr. *Nicholson* and his Counsel, Messrs. *Lewis*, *Bradford*, *Tilghman*, *Higginson* and *Gibson* were seated

on the west side of a great table which was placed in the middle of the hall. The managers and their Counsel, Messrs. *Wilcocks, Rawle, Ingersoll* and *Dexter* took the east side of the said table.

The Speaker and members of the Senate were seated on the south side of the room, and looked to the north, their seats having been raised and brought into a narrower compass for the purpose of making room for the members of the lower House, and for spectators of respectability who might attend.

The Speaker addressed Mr. *Nicholson*, and informed him, that every indulgence in the power of the Senate should be granted to him, and to his Counsel, that the Secretary should issue subpoenas for witnesses, give him copies of any papers in possession of the Senate, and allow him any other privilege not incompatible with the nature of the misdemeanors wherewith he stood charged.

Mr. *Nicholson* bowed to him, and sat down to write.

The Secretary of the Senate read the following

“ *Articles of accusation and impeachment for high misdemeanors against John Nicholson, Comptroller-General of the commonwealth of Pennsylvania, by the House of Representatives of the said commonwealth, in their name, and in the name of the People of Pennsylvania, exhibited to the Senate thereof.*

“ *Article I. THAT, by an Act of the General Assembly of this commonwealth, passed on the twenty-seventh day of March, in the year 1789, entitled “An Act to repeal so much of any Act or Acts of Assembly of this commonwealth, as directs the payment of the New-Loan debt, or the interest thereof, beyond the first day of April next, and for other purposes therein mentioned,” it was, among other things declared and enacted, That so much of every Act or Acts of General Assembly as directed or secured the payment of the principal sum or sums mentioned in certain certificates, commonly called New-Loan certificates (which had*
been

been issued in pursuance of a preceding Act, passed on the first day of March, 1786) or the interest thereof, beyond the term of four years, should be thenceforth repealed and made null and void; thereby rendering the said certificates no longer a debt, or evidence of a debt, due and owing from the state of *Pennsylvania*: But, nevertheless, *John Nicholson*, the Comptroller-General of this commonwealth, to promote and procure his own emolument, under the colour of his office, pretending as well to facilitate the execution of certain Acts of Congress hereinafter mentioned, touching a loan proposed by the United States to the creditors of the respective states, as to carry into effect a certain Act of the General Assembly of this commonwealth, hereinafter also mentioned, touching the redemption of certain debts due and owing from state of *Pennsylvania*, did, at various times, after the passing of the said Act of the sixth day of March, 1789, to wit, between the tenth day of April, 1792, and the first day of August, 1792, recognize, certify, and declare the said certificates, commonly called New-Loan certificates, to be subscribable, as debts due and owing by the state of *Pennsylvania*, to a certain loan, opened and proposed, on the part of the United States, to the creditors of the respective states, in and by two several Acts of Congress, passed, respectively, on the fourth day of August, 1790, and on the eighth day of May, 1792; thereby committing a high misdemeanor, contrary to the intent and meaning of the said law, passed on the twenty-seventh day of March, 1789, in violation of the confidence reposed in him as a public officer, and manifestly, as the said *John Nicholson* well knew, to the risque and injury of the commonwealth.

“Article II. That, by an Act of the General Assembly, entitled “An Act to provide for paying and redeeming certain public debts, and for defraying the expences of government,” passed on the tenth day of April, 1792, provision was made, among other things, for redeeming certain debts then due and owing by
this

this commonwealth ; in the specification of which debts the said certificates, commonly called New-Loan certificates, were not included, nor could they, in any wise, be contemplated to be objects of the said redemption ; but, nevertheless, the said *John Nicholson*, the Comptroller-General of this commonwealth, with a view to promote and procure his own emolument, and under colour of his office, did recognize, certify, and declare the said certificates, commonly called New-Loan certificates, to be redeemable ; thereby committing a high misdemeanor, contrary to the terms, intent, and meaning of the said Act of the General Assembly, passed on the tenth day of April, 1792, in violation of the confidence reposed in him as a public officer, and to the manifest loss and injury of this commonwealth.

“ *Article III.* That the said *John Nicholson*, the Comptroller-General of this commonwealth, with intent to promote and procure his own emolument, and in order to avoid discovery and detection in so doing, until such emolument was actually reduced into his own possession, did not consult the Register-General touching the above transactions, nor communicate the same to the Governor ; nor did he discriminate, in the certification entered upon the face of the abstracts of debts respectively, by which certification he recognized and declared the said certificates, commonly called New-Loan certificates, to be subscribable to the said loan opened and proposed on the part of the United States, to the creditors of the respective states, nor in the certification by which he recognized and declared the same to be redeemable under the said Act of the tenth day of April, 1792, between the said certificates, commonly called New-Loan certificates, and other certificates which were properly debts, or evidences of debts, due and owing from this state, and as such might lawfully be subscribed to the said loan, and redeemed by virtue of the said Act of the tenth of April, 1792 : in which conduct the said Comptroller-General committed

committed a high misdemeanor, in as much as, thereby, all the checks of office, provided by law, were destroyed, the other officers of government were deluded into error, and the commonwealth suffered manifest loss and injury,

“ *Article IV.* That, by the Constitution of this commonwealth, it is declared, that no money shall be drawn from the Treasury, but in consequence of a previous appropriation by law; yet the said *John Nicholson* with a view to promote and procure his own emolument, did, under colour of his office, and in the above mentioned delusive manner, certify to the Governor that certain debts, including the said certificates, commonly called New-Loan certificates, but not naming or describing the same, were redeemable and payable, when no fund was, by law, provided for paying the same; thereby committing a high misdemeanor, misleading the other officers of government, and causing money, without a previous appropriation, to be drawn from the Treasury in violation of the constitution.

“ *Article V.* That the said *John Nicholson*, Comptroller-General of the commonwealth, with intent to promote and procure his own emolument, and having formed a plan to cause, under colour of his office, the said certificates, commonly called New-Loan certificates, to be redeemed, did, by himself or his agents, between the tenth day of April and the first day of August, 1792, purchase a very great amount of the said certificates, as well from persons who came to exchange the same at his office, in pursuance of a provision for that purpose contained in the said Act of the twenty-seventh of March, 1789, as from others; which certificates, so purchased, were afterwards actually redeemed and paid for at the Treasury; thereby committing a high misdemeanor, rendering his official trust subservient to the purposes of speculation, and injuring the reputation, as well as the interest of the commonwealth, whose officer he was.

“ And the said House of Representatives, by protestation,

testation, saving to themselves the liberty of exhibiting at any time hereafter, any other accusation or impeachment against the said Comptroller-General, and also of replying to the answers that the said Comptroller-General shall make unto the said articles or to any of them, and of offering proof of the said premises or any of them, or of any other impeachment or accusation that shall be exhibited by them as the case shall require, do demand that the said *John Nicholson*, Comptroller-General of this commonwealth, may be put to answer all and every the premises, and that such proceedings, examinations, trial and judgment may be upon him had and used as is agreeable to the constitution and laws of this commonwealth, and the said House of Representatives are ready to offer proof of the premises, at such time as the Senate of the commonwealth of *Pennsylvania* shall appoint.

“ Additional Articles of Impeachment against John Nicholson, Comptroller-General.

“ Article VI. THAT the said John Nicholson, Comptroller-General of this commonwealth, being intrusted by the aforesaid Act, entitled, “ An Act to repeal so much of any Act or Acts of Assembly of this commonwealth, as directs the payment of the New-Loan debt, or the interest thereof, beyond the first day of April next, and for other purposes therein mentioned,” passed the twenty-seventh of March, 1789, to receive the said certificates, commonly called New-Loan certificates, from the persons holding the same, and to re-deliver, to such persons, the certificates of debts, due by the United States, loaned to this state, did, in the execution of the trust so in him reposed, receive, from sundry persons, certain certificates, commonly called New-Loan certificates to be exchanged as aforesaid; whereby, and by virtue of the said Act of Assembly, the said certificates became the property of this commonwealth, and ought to have been delivered by him, to the Register-General, for the purpose of
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being cancelled and preserved; yet the said *John Nicholson*, then being Comptroller-General of this commonwealth, well knowing the same to be the property of the commonwealth, but contriving and intending to convert certain of the same certificates to his own use and emolument, did, between the tenth day of April, 1792, and the first day of August, 1792, unlawfully, and contrary to the duties of his office and the trust so as aforesaid in him reposed, subscribe the last mentioned certificates to the loan aforesaid, proposed by the United States to the creditors of this state, in his own name and for his own use and benefit; whereby the said *John Nicholson* hath committed a high misdemeanor, in the violation of the trust and confidence by this commonwealth in him reposed, and manifestly tending to the injury and loss of the said commonwealth.

“*Article VII.* That the said *John Nicholson*, Comptroller-General of this commonwealth, being intrusted by the aforesaid Act, entitled, “An Act to repeal so much of any Act or Acts of Assembly of this commonwealth, as directs the payment of the New-Loan debt, or the interest thereof, beyond the first day of April next, and for other purposes therein mentioned,” passed the 27th day of March, 1789, to receive the said certificates, commonly called New-Loan certificates, from the persons holding the same, and to re-deliver to such persons the certificates of debts due by the United States, did, in the execution of the trust so in him reposed, exchange, for sundry persons, certain certificates, commonly called New-Loan certificates, by receiving of the said persons, the said New-Loan certificates, and delivering, in return thereof, an equal amount in the certificates of debts due by the United States; whereby, and by virtue of the Act of Assembly in such case made and provided, the said New-Loan certificates became the property of this commonwealth, and ought to have been delivered to the Register-General to be cancelled and preserved; yet the said *John Nicholson*, then being Comptroller-General of this commonwealth, well knowing the pre-
mises,

mises, but contriving and unlawfully intending to convert certain of the same certificates to his own use and emolument, and by subscribing the same to the loan aforesaid, by the United States proposed, to procure the amount thereof to be paid to him by this commonwealth, did, between the first day of April, 1792, and and the first day of August, 1792, unlawfully and contrary to the duties of his said office and the trust so as aforesaid reposed in him, subscribe the said last mentioned certificates, commonly called New-Loan certificates, to the said loan proposed by the United States, in his own name and for his own use and benefit; and did afterwards apply for, and obtain the amount thereof; to be paid by the Treasurer of this commonwealth to his use, whereby the said *John Nicholson* hath committed a high misdemeanor, hath violated the trust and confidence so as aforesaid in him reposed, and hath occasioned great loss and detriment to this commonwealth."

"HOUSE OF REPRESENTATIVES, *Wednesday,*
September 4, 1793. P. M.

"On motion,

"Resolved, That Messrs. *Morgan, Swanwick, Evans, Gallatin, and Johnston* be a committee to offer to the Senate an amendment of the first article of the impeachment of *John Nicholson*, Comptroller-General of the commonwealth, by substituting the words "*twenty-seventh,*" in the place of the word "*sixth,*" in the thirty-second line, and to request the Senate to direct the same to be made."

"*The Answer of John Nicholson to the articles of impeachment exhibited against him by the honorable the House of Representatives of the commonwealth of Pennsylvania.*

"The said *John Nicholson*, saving to himself all advantages of exception to the said articles, respectfully answereth and saith,

"That

“ That he is not guilty of all or any of the matters in the said articles contained, in manner and form as they are therein charged against him.”

“ *The Replication of the House of Representatives of the commonwealth of Pennsylvania, in their behalf, and in the name of the People of Pennsylvania, to the Answer made by John Nicholson, to the articles of accusation and impeachment exhibited by them to the Senate, and now depending against him.*

“ The House of Representatives of the commonwealth of *Pennsylvania*, Prosecutors on behalf of themselves, and the People of *Pennsylvania*, against *John Nicholson*, Comptroller-General of the said commonwealth, reply to the answer of the said *John Nicholson*, and aver*, that their charge of high misdemeanors against him the said *John* is true, and that the said *John* is guilty of all and every the matters contained in the articles of impeachment, by them exhibited against him, in the manner and form as they are therein charged, and this the said House of Representatives are ready to prove against him, at such convenient time and place as the Senate shall appoint for that purpose.”

The Speaker addressed the managers and observed that the Senate were ready to hear them.

Whereupon, Mr. *Morgan* rose, to open the prosecution, addressing himself to the Speaker and Gentlemen of the Senate; premising, that as a Member of the House of Representatives, and one of the managers appointed to conduct the present impeachment; he would endeavour to give a general view of the testimony, both written, and unwritten, which would be adduced in support of these charges. He observed, that, this practice had been borrowed from that

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country

* It is worthy of remark that notwithstanding this *averment*, the House of Representatives who made it, never went into any examination of the evidence, on which the charges were founded; and that Mr. *Nicholson* in answer to his letter of 25th Feb. 1794, (see page 200) was informed by the managers that the oral testimony given in the former House had not even been reduced to writing or preserved.

country, from which the most of our rules, and precedents were copied: They found it necessary in that country to bring notorious offenders to the grandest tribunal of the nation: therefore impeachments were found to have been conducted before the house of lords in *England* as early as the year 1321.

This being the properest court where persons of fortune and influence should be tried, and where deception and imposition could not avail, nor have any weight.

In *Pennsylvania* few instances had occurred, the proceedings are circumscribed, and she has adopted the practice of *England* by ingrafting this precedent in her constitution.

The present impeachment was brought forward against this officer by the House of Representatives of this commonwealth, conformably to the precedent above alluded to, and agreeably to the constitution which prescribes, that "The House of Representatives shall have the sole power of impeaching."

"All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation. No person shall be convicted, without the concurrence of two thirds of the members present."

"The Governor and all other civil officers, under this commonwealth, shall be liable to impeachment for any misdemeanor in office. But judgment in such cases, shall not extend further than to removal from office, &c." and according to the practice acknowledged and recognized in GREAT BRITAIN.

He adverted to the manner in which the present trial had been instituted, and he read the report pages 3-4-5-6-7, at the same time giving the history of the manner *when* and *how*, that report was brought forward, and the first five articles were adopted, which can be easily collected from a perusal of the foregoing pages.

Mr. *Morgan* made suitable remarks on every member and section of the report, and of the several circumstances attending its being adopted.

He observed, that to understand the subject properly,

it was necessary to go thro' the laws of *Pennsylvania*, and the Acts of Congress, relative to the subscription to the first loan; to consider the provision of *Pennsylvania* to comply with the requisition of Congress, and to examine minutely whether she considered New-Loan certificates as a debt, in order to raise this superstructure on a fair construction of the respective Acts of Congress, and laws of *Pennsylvania*.

He said that the amount of New-Loans which were redeemed was about 63,000 dollars, and that Mr. *Nicholson* owned about 60,000 dollars of that sum.

He read the preamble to the Act of the 16th March, 1786, explaining the views of the Legislature to provide for the payment of the debts due to the citizens of this commonwealth, as Congress could not; the 13th section was then read as being more immediately connected with the present case; the 14th section describes the class of creditors to be relieved, and gives a description of the certificates which were entitled to interest.

He read a long report of a grand committee of Congress, Sept. 24, 1785, Journals of Congress, volume 10, page 310, 311, 329, and consequent resolution, by which it appeared that Congress were dissatisfied at the mode pursued by *Pennsylvania*, and forbid their Commissioner of Loans to settle or issue, unless as therein provided, that is with these States who had complied with the requisition of 1781.

This was disagreeable to *Pennsylvania* who afterwards passed the Act of March 1, 1786, with a view to counteract the measures contemplated in the resolution of Congress, and to accommodate the citizens of this state, who were creditors of the United States. And near two million pounds of New-Loans had been issued.

Mr. *Morgan* gave the history of New-Loans, issued in consequence of this Act of March 1, 1786—repealed by Act of March 27th, 1789, the interest paid for four years; the second and third sections are the most material parts of the repealing Act—the former principles are recognized in this Act, and after its passing no other
use

use could be made of the New-Loans than to exchange them for Continental certificates.

They could no longer continue a claim, as the law was repealed which constituted them a claim: It became difficult from payments in the Land-Office to return continental certificates, and the fund from the Land-Office was added in consequence of the practice of splitting certificates.

In the repealing Act of 1789 the Legislature contemplated to restore their debts to the parties—*Pennsylvania* designed an exoneration on the return of the continental certificates, on one single condition, to wit, the restoration of those certificates to the parties.

The State has been injured, the criminality of persons depends much upon circumstances, she is injured not by her own acts, but by the conduct of one of her officers, by a wrong construction of law, whether wilful or mistaken, the Senate will judge when the facts and evidence will be laid before them.

This construction under the Act of the 10th April, 1792, has involved the State in a loss of near 15000 dollars, and this immense loss has been sustained by this construction of the present defendant.

Mr. *Morgan* read part of the 12th and 13th sections of the Act of Congress of the 4th August, 1790, which contemplates only the assumption of certificates issued for services or supplies, none excepted but "certificates issued by the commissioners of army accounts in the state of *North-Carolina* in the year 1786."

The Act of 27th March, 1789, passed before the Act of the 4th of August, 1790; If the New-Loans are not subscribable to the first loan, they cannot be to the second of the 8th May, 1792. The idea of subscribing them never entered the mind of any person during the continuance of the first loan.

He read the Act of Assembly of the 9th of April, 1791, respecting purparts, for making up the deficiency of interest on continental loans, the Legislature considered the persons relieved here as their only creditors,
whose

whose debts were subscribable, had New-Loans been considered as existing debts, equal provision would have been made for them in the said Act.

In the next place he adverted to the Act of the 10th of April, 1792, in which Act the Legislature determined to pay off their proper debts with the purparts. The 2d section appropriates the stock to pay the debts mentioned in the first section, the section describes, 1, the fund; 2, the debts, here he observed that it was necessary to see if New-Loans were included; the interest on New-Loans was not payable at this time. As it is under a construction of this law the articles of impeachment were brought forward, it was necessary to pay proper attention to it, and to weigh the particular state of the affair with the eyes of scrutiny and candor.

This is the construction put on it by us, we cannot tell what is the construction of the Comptroller, or his counsel. Agreeably to the duties required of the Governor for the purpose of carrying this Act into execution, it was necessary for him to have an account of the debts.—He therefore applied to the Comptroller and Register-General, who estimated the debt to be redeemed, and the stock to be sold; this estimate, Mr. *Morgan* said, did not include New-Loans, but thro' some fatality this document has been lost.

Had the Legislature designed to redeem the New-Loan certificates it was necessary to appropriate larger funds—The stock which had been ordered to be sold, was only adequate to the other debt.

The fifth section refers only to certificates mentioned in the second section.

The sixth section is apparently more indefinite and uncertain, and depended upon what provision Congress would make.

Mr. *Morgan* then read the Act of Congress of the 8th of May, 1792, supplementary to the Act of August, 1790, which is extended on the same terms, same construction must be attached to each Act, as both Acts are on the same principles. Here he referred to the 2d section

section of the Act of Congress of the 8th May, 1792, relative to non-subscribing creditors, to get the same interest which he said, merited particular attention.

In the 6th section of the Act of the 10th of April, 1792, as it is confined to the assumption before the first of July, and nothing could strictly be done conformably to it under the last Act of Congress, because no certificates could issue under it until March the 1st, 1793: This compared with the 6th section of the Act of Assembly of the 10th April, 1792, it became impossible that both laws could be literally and expressly complied with; a correspondence took place, between the Governor, Secretary of the commonwealth, Comptroller-General and the Secretary of the Treasury of the United States, and arrangements were made accordingly—all the extracts which he read were repeated, reiterated, dilated and descanted upon, placing every subject in various points of view: remarked that he had gone through the different laws of the United States, and acts of this commonwealth, which were connected with this business, that he would then be under the necessity of referring to written documents and oral testimony; that the letters were numerous and lengthy, and as it was then within a quarter of two he proposed deferring the reading of the letters until the next day.

The Speaker asked Mr. *Morgan* how long it would take to go through them, he answered, two or three hours, whereupon the Speaker adjourned the trial until 11 o'clock the next day.

In the minutes of the House of Representatives the following entry is recorded:

“In conformity to the resolution adopted yesterday, the House resolved itself into a committee of the whole, for the purpose of attending the trial of *John Nicholson*, Comptroller-General.

“The Speaker quitted the chair and Mr. *Wynkoop* was placed therein.

“The committee then proceeded to the Senate chamber for the purpose aforesaid,

After

“ After some time the committee of the whole returned to their own chamber.

“ The Chairman then left the chair and the Speaker resumed it.

“ The Chairman then reported that the committee of the whole had attended the trial of the articles of impeachment against *John Nicholson*, Comptroller-General.

“ Whereupon,

“ The committee appointed to manage the trial of the articles of impeachment of the House of Representatives, against *John Nicholson*, Comptroller-General reported progress.”

Second day of the trial.

THURSDAY, FEBRUARY 27.

AT 10 minutes after the hour of eleven the consideration of legislative business was postponed during pleasure, in order that the Senate might sit in their judicial capacity.

The Court being called :—

Mr. *Morgan* resumed his argument respecting the difficulty which occurred in the Act of Congress granting no certificates until March, 1793, and the Act of the 10th April, 1792, requiring a transfer before the first of July, 1792, and adverted to the necessity of an arrangement in consequence.

He observed that the actions of the Comptroller-General were contrary to his (the Comptroller's) own opinion respecting the redeemability of the certificates in question, and that this could be manifest from the letters to be produced, which were written by that officer, by the Register-General and other public officers—for this purpose he began with the following letter.

“ SIR,

June 22, 1792.

“ THE Act of the Legislature of *Pennsylvania*, entitled “An Act for paying and redeeming certain public debts,

debts, and for defraying the expences of government, provides that to entitle the holders, of such debt of this state, as is assumable by the United States, to payment therefor, they shall first subscribe the same to the loan of the United States, and on or before the first of July, 1792, transfer to the State-Treasurer for the use of the commonwealth, the certificate or certificates which they shall receive from the United States, in consequence of such subscription, or all and singular the interests and benefits to be derived from the provision which hath been made by the supplementary Act of Congress, passed at last sessions providing for the public debt.

“Under the said Act of Congress the certificates for the subscriptions made will not issue until March 1st, 1793, and consequently they cannot be transferred within the time limited above. The Loan-Officer on making the deposit of State debt grants a descriptive receipt therefor, conditional to return any, that may not be assumable—we have considered this subject, have consulted the Loan-Officer aforesaid, and obtained his concurrence, and are of opinion, that the best way will be to receive from the parties those certificates of deposit signed by Mr. *Smith*, examine the same, as to their being genuine certificates, and assumable, as well as the amount of principal and interest of such as are, till July 1st, 1792, and take a transfer to the Treasurer thereon, in such manner as the Loan-Officer agrees, shall enable him to issue the certificates on the first of March, 1793—according to the provisions of the Act of this State aforesaid.

“This plan is submitted for the approbation of your excellency.

And we have the honor to be, &c.

JOHN NICHOLSON,
JOHN DONNALDSON.”

His Excellency THOMAS MIFFLIN, Esq.
Governor of *Pennsylvania*.

“*Secretary's*

" Secretary's office, Phila. June 23, 1792.

" GENTLEMEN,

" THE Governor directs to acknowledge the receipt of your letter of the 22d instant; and to inform you, that, thinking it proper to have the sanction of the Secretary of the Treasury in making any arrangement with the general government to satisfy that part of the law for the redemption of the State debts, which require a subscription to the loan proposed by Congress and a transfer of the evidence of the stock, he has written to that officer on the subject, and will communicate his answer as soon as it is received.

I am, Gentlemen, &c.

A. J. DALLAS,
Secretary."

To the Comptroller and
Register-General.

The letter from the Governor to Mr. *Hamilton*, page 96, 97 :—

And the letter from Mr. *Hamilton* to the Governor, page 97, 98, were then read, with applicable observations on each.

The arrangement made in consequence of the foregoing took place, and the Comptroller and Register were to certify the *genuine* and *assumable* quality of the debt, the party after assigned to the Treasurer; a certification was made to the Governor, who issued his warrant on the Treasury for payment.

That the Comptroller-General certified New-Loans to be *genuine* and *assumable* he produced the abstracts of *Thomas Hale*, *Joseph Honeycomb*, and *Alexander Addison*.

Question by Mr. *Lewis*. To whom were they certified to be genuine and assumable?

Ans. There is no direction, suppose to Mr. *Smith*.

Mr. *Ingersoll* observed that the abstracts on the table, were sent to him from the Loan-Office of the U. States.

Mr. *Morgan*. This certification must be in his official capacity, as he could not do it in any other way, by which he has transgressed the bounds of his duty, he was not warranted in so doing, if the certificates were

not assumable. He referred to the communications between the officers of the general and state governments.

Whatever might have been the opinion of Mr. *Hamilton* before he had seen the law, his sentiments were otherwise after he did see it.

He then read the letter from Mr. *Hamilton* to Mr. *Dallas*, page 76-7-8-9, commenting as he went along;—observing that the New-Loans were not issued for services or supplies but for Continental certificates. They were not evidences of debt when certified, as the law was repealed. The Secretary of the Treasury could not be acquainted with our laws, and the certificates on the face of them appeared to be for debts. As they were stated to him they appeared to be subscribable, afterwards on more mature information and consideration they were not so.

In a subsequent letter the Secretary gives a different opinion. He read the following:—

“*Treasury Department,*

“SIR,

August 21, 1793.

“I HAVE had the honor of your letter of the 29th of July last which the press of business has prevented my sooner answering.

“The certificates to which you refer have not been admitted upon the loan proposed by the acts of Congress payable in evidences of State debt.

“The following circumstances have attended the case. Certificates of the description of those called New-Loan certificates of *Pennsylvania* to the amount of 65,210 dollars and 28 cents were offered for subscription under the Act, entitled “An Act supplementary to the Act for making provision for the debt of the U. S.”

“It appeared (a circumstance which had not come to my knowledge till after those certificates were so offered) that there was a law of the commonwealth of *Pennsylvania* which rendered it questionable whether they could legally be considered as a subsisting debt of the commonwealth, a quality necessary to their being assumable, and an opinion of the Attorney-General of *Pennsylvania*

sylvania was communicated to me, shewing that he did not view them as a subsisting debt of the commonwealth.

“ This led me to state the case for the consideration of the Attorney-General of the United States, who gave an opinion that the Acts of the *Pennsylvania* Assembly of the 27th of March, 1789, and of the 30th of March and 1st of April, 1790, abolished the certificates in question as debts of the state except for the purpose of being re-exchanged for Continental certificates, and therefore that the former as wanting the due recognition from that state could not be legally received upon loan.

“ To this opinion I was about to conform and to direct the rejection of the certificates offered to the loan.

“ But having learnt that there was a probability of a judicial investigation of the point, I forebore to give a final instruction concerning it and left the matter suspended.

“ When the commissioners were about to close the settlement of accounts between the united and individual States it became necessary to certify to them the amount of the debt of this commonwealth which had been admitted upon loan. The course pursued was to certify absolutely the sum which had been subscribed and finally admitted, and to state in a note the amount and situation of the certificates in question which had been offered to the loan and not admitted. It is understood that this amount was not embraced in the statement of the Commissioners.

“ There has been no suspension of the interest on so much of the debt of the commonwealth as was subscribed and admitted upon the loan.

“ These circumstances amount to a virtual rejection of the certificates to which your enquiry is understood to have reference.

“ I state them particularly that the precise course of the business may be accurately seen.

ALEX. HAMILTON.”

“ His Excellency the Governor
Pennsylvania.”

Mr.

Mr. *Morgan* observed that this opinion of the Secretary was not on general principles, but immediately applied to the New-Loan certificates certified by Mr. *Nicholson* to be genuine and assumable.

The grounds not unknown to our officers, the Comptroller must have been better acquainted with them than the Secretary of the Treasury. It does not appear that in his former communications he ever mentioned the repealing Act of 1789, to Mr. *Hamilton*; therefore the Secretary's former decision must have been on a partial view and consequently of no credit.

Mr. *Nicholson* knew that no subscription could be made without a previous surrender of continental certificates, and this he was not empowered to do: This appears from the law, and his letters on this subject to the Governor.*

Mr. *Morgan* then read Mr. *Hamilton's* letter to the Governor, pages 102 and 103.

The following letters were then read.

“ *Secretary's Office, Philad.* 23d Dec. 1791.

“ SIR,

“ INCLOSED I send for your perusal, a letter which the Governor has received from the Secretary of the Treasury of the United States; and his Excellency directs me to request that you will, as soon as possible, make a full report to him upon the subject to which it refers. I am, &c.

A. J. DALLAS.”

To JOHN NICHOLSON, Esq. Comptroller-General of *Pennsylvania*.

“ *Comptroller-General's Office, Philad.*

“ SIR,

Decem. 24, 1791.

“ IN compliance with your excellency's desire communicated by letter from the Secretary of the commonwealth of yesterday, covering a letter addressed to your excellency

* See part of his letter in Italics, page 222, for the contrary.

excellency by the Secretary of the Treasury of the United States, dated the 21st instant; I report—

“That the whole of the certificates of this state granted for a like sum of certificates of debt of the United States, amounts to

£. 1,937,885 : 15 : 3

Of which there was redeemed,	118,470 : 6 : 6
Balance,	1,819,415 : 8 : 9

£. 1,937,885 : 15 : 3

By an Act passed in March, 1789, the holders of this balance are entitled on presenting their certificates of this state and liquidating the interest received thereon, to receive back their former ones or an equivalent; this hath taken place to a great amount, insomuch that there does not at present remain much unexchanged on a comparison of the whole, the exact amount at present unexchanged I cannot tell, a number of exchanges to the amount of 40 or 50 presented are pending for want of the parties paying the indents due, the remainder I estimate from 40 to 50 thousand pounds, if absolute precision be necessary, I will have the additions and selections made so as to give the sum exactly.

When I read the letter of the Secretary of the Treasury referred to aforesaid, I was doubtful until I consulted it again, whether it really imported that the interest payable quarterly on the certificates granted on the Assumed debt of this state, would be suspended until the certificates of the Federal debt not yet exchanged for the New-Loans as aforesaid should be surrendered or an equivalent in stock under the funding system, as such a case would prostrate the faith of the United States to the will of the Legislature of this state, if they should refuse to surrender them, then the United States (without any fault on the part of the original subscribers or the present holders) would not pay the interest they had issued their obligation for, in which they promised payment. It appeared to me that if such were the law the

the public credit of the United States might be shaken by it and rendered precarious, but on turning to the law it will appear that the provision for returning the certificates of the United States, was to prevent the United States from paying the interest twice on the same debt, and that in conformity thereto, if any of the certificates of this state commonly called New-Loan debt had been before the first of October last, when the loan closed, subscribed to the said loan, it would have been requisite before the stock had issued therefor, that an equal sum should have been surrendered by the state as aforesaid. *The state would thus have redeemed her certificates through the United States in the same manner at present practised, for individuals, but no such certificates of this state were subscribed—consequently the United States are entitled to none of the continental certificates, which are demandable by the persons holding the New-Loans. If they should be delivered to the United States, this state might have to pay the New-Loan certificates without having this resource to do it with. I think too highly of the faith of the public to suppose, that the holders of New-Loan are compellable either to subscribe them to the United States or to re-exchange them for the continental certificates, or that to such as do not, the state are absolved from payment both of principal and interest, but the market value and the irredeemable quality of the continental stock and the present funds of the United States are generally sufficient to induce the change, as is evinced from the great quantity already so exchanged, of the remainder some part is exchanged almost every day, and if the loan should be opened by Congress the exchanges would be encreased thereby.*

I have, &c.

JOHN NICHOLSON."

His Excellency THOMAS MIFFLIN, Esq. }
Governor of Pennsylvania. }

"SIR,

Feb. 29, 1792.

“SIR,

“THE subject committed to me by your excellency in December last, respecting the claim made by the Secretary of the Treasury to a surrender on the part of the State, of the Continental certificates not exchanged, having been brought to a close ; and being this day informed at the Treasury that all obstacles were removed respecting the transfer and payment of interest quarterly on the assumed debt of this state, or the payment quarterly to the state of the residuum unsubscribed of this state's quota ; and orders having gone out to the Loan-Office of the district of *Pennsylvania*, consequent thereupon, I hasten to inform you thereof.

“The subject was an important one, and to have required the Continental certificates from *Pennsylvania*, while the New-Loans for which they were given were out, and the state responsible for, without these means of redemption, could have placed her in an unpleasant situation. To take off the appearance of this hardship, it was suggested, that in case the New-Loans not exchanged, would not be subscribed to the United States by the holders (which on the proposed terms of the loan might be done) yet still that the state would by the terms of the same loan, be in the receipt of a sufficient sum from the Union to meet the interest due to these creditors. But to this it was objected, that this receipt of interest by the state would be temporary, and would cease when the settlement of our accounts with the United States should be effected, and the balances provided for agreeably to law, whereas the demand against the state would be perpetual, and could only be discharged by payment of the debt.

“On the whole after much attention to this business it hath been settled to our wish ; and the good sense of the Secretary of the Treasury hath led him to a decision, under the Act of Congress of August 4th, 1790, which
is

is equitable and consonant with the scope of the said Act. I am, &c.

JOHN NICHOLSON."

His excellency THOMAS MIFFLIN, Esq.
Governor of *Pennsylvania*.

Mr. *Morgan* made suitable remarks on these letters, and observed that *Pennsylvania* had paid upwards of 63,000 dollars, and had nothing in return, and could not procure the Continental certificates. This act being done clandestinely must have a different construction than if it had been done openly.

The Comptroller-General obtained the money before the Governor or Register-General had any information of it: It was done in a way regardless of the checks of office. It was necessary that New-Loans should be declared assumable before they were subscribed, if there had been a full consultation it would shew some degree of fairness. The Governor should be consulted if there should exist any difference of opinion between the Comptroller and Register-General.

Mr. *Nicholson* shut the secret in his own breast, the dates of interest on the face of the abstracts were only inferences, and the Register-General did not know they were New-Loans.

Mr. *Morgan* read the warrant No. 462, by which Mr. *Nicholson* reduced the money into his possession, the Register-General was not to blame as he did not enter into the calculations of abstracts.—Dates of interest and hurry of business might have induced him to overlook or not to have attended to this particular.

He read the following letter—

"SIR,

April 28, 1792.

"PROPOSALS of 12*s*. in the pound and upwards have been received for 986,000 dollars 3 per cent. stock. The sum estimated to be necessary for the redemption of the State debt according to law. A particular account

count of the proposals shall be laid before you—in the mean time we give this information, and are, with great respect, &c.

JOHN NICHOLSON."

His excellency THOMAS MIFFLIN, Esq.

Governor.

[*Intended to have been signed by the Register.*]

He observed that the original letter from the Governor written two days after the foregoing and the answer were not to be found.

He read the following letters:—

"SIR,

April 30th, 1792.

"INCLOSED is the list of the proposals and the sums respectively for 986,000 dollars 3 per cent. stock for redemption of the state debts submitted for your approbation. We are, &c.

JOHN NICHOLSON,
JOHN DONNALDSON."

"N. B. I. Brunson & Co. have relinquished 30,000 of their proposals of the 27th, which is therefore not included in the inclosed list."

His excellency THOMAS MIFFLIN, Esq.

Governor of Pennsylvania.

"List of proposals for the purchase of 3 per cent. stock:—

John Nicholson, in trust	46,000	at	12 $\frac{1}{2}$ %.
Isaac Brunson & Co.	20,000		12 $\frac{1}{18}$ %.
Griffith Evans	3,000		12 $\frac{1}{2}$ %.
John Nicholson	7,000		12%.
James & Wm. Miller	5,000		12 $\frac{1}{4}$ %.
Philip Reilly	10,000		do.
Thomas M. Willing	10,000		do.
Isaac Brunson & Co.	20,000		do.
John Donnaldfon (A.)	10,000		do.
John Donnaldfon & Co.	30,000		do.
John Donnaldfon	10,000		do.

Carried over

171,000

F f

Brought forward	171,000	
Joseph Webb -	2,000	12f $\frac{1}{2}$.
N. G. Philips -	20,000	12f 1.
John Lynch -	10,000	do.
Robert Morris -	200,000	12f $\frac{1}{2}$.
George Eddy -	30,000	12f 1.
George Meade -	15,000	do.
Isaac Brunson & Co. -	20,000	12f $\frac{1}{2}$.
James Crawford -	10,000	do.
John Nicholson, -	12,000	12f.
Le Roy & Bayard -	159,000	12f $\frac{1}{2}$.
Walter Stewart -	30,000	do.
Thomas M. Willing -	5,000	do.
Robert Morris -	250,000	12f.
Wm. Bingham -	6,000	12f $\frac{1}{2}$.
John Donaldson -	6,000	12f.
Walter Stewart -	20,000	12f $\frac{1}{2}$.
Clement Biddle -	20,000	do.

986,000

JOHN NICHOLSON,
JOHN DONNALDSON."

April 30, 1792.

"I approve, 30th April, 1792,
T. MIFFLIN."

"Will you be so good as to calculate the specie sums
to be paid on each proposal.

A. J. DALLAS."

"Secretary's Office, Philad. Dec. 24, 1792.

"GENTLEMEN,

"THE Governor directs me to request, that you
will immediately furnish him with a copy of the estimate,
upon which the sale of the 3 per cent. stock to the
amount of 986,000 dollars, was directed, for the pur-
pose

pose of redeeming the state debts, agreeably to the Act of Assembly. I am, &c.

A. J. DALLAS."

To the COMPTROLLER and REGISTER-
GENERAL of *Pennsylvania*.

"SIR,

December 26, 1792.

"THE quantity of 3 per cent. stock directed to be sold by the second section of the Act of the 10th of April, 1792, was estimated at the price of 12s per pound, as the market price at that time was lower, it would not justify an higher calculation, and the limitation of price in the Act would not admit sales for less.

"The calculations are not preserved, however it is easy to re-state it.

"The funded debt then to be redeemed was about

£. 103,559

"The funded depreciation debt, 48,450

"Amount

£. 152,009

"Equal in dollars to

405,357 33

"To redeem 218,469 $\frac{84}{100}$ dollars 3 per cent. at 10s $\frac{1}{2}$

109,234 92

"To redeem 145,646 $\frac{56}{100}$ deferred state purparts at 39 per cent. required

56,802 15

"And to redeem the residue of the dollar-money, about 12,500 dollars and interest

20,112

"Amount

591,506 40

"The amount of the neat proceeds of the sales—986,000 dollars at 12s $\frac{1}{2}$

591,600

We have the honor, &c.

JOHN NICHOLSON,
JOHN DONNALDSON."

His Excellency THOMAS MIFFLIN, Esq.
Governor of *Pennsylvania*.

Here

Here Mr. *Morgan* remarked that the New-Loan certificates were excluded.—If these two officers made a partial statement, they did not comply with the requisitions, it must therefore be conceded that it included all: The act of the 10th of April, 1792, was their rule of construction. He then read the 2d section of that act. Mr. *Morgan* then held in his hand an abstract which had been actually redeemed, which did not on the face of it shew the certification of the Comptroller for being *genuine* and *assumable*, but it was in the hand writing of that officer, in the abstracts of others, it was necessary, here it was not, the form is similar to the others; it consisted of eight columns.—1. Date of certificate. 2. Number of ditto. 3. By whom issued. 4. To whom issued. 5. Commencement of interest. 6. Amount of each certificate. 7. Interest computed to December 31, 1791. 8. Total amount.

In this abstract it is necessary to observe that a certificate purchased from an irreproachable witness on the 7th of July, 1792 is contained in a receipt dated the 30th June, 1792, an erasure is made to cover purchases made after the first of July, to bring them within the time prescribed by the act.

The foregoing were offered to support the three first articles, the fourth is rather a deduction from them, he observed that the three first were considered together for they could not be separated.

He read the fourth article.

Mr. *Nicholson*, he observed, could not certify to the officers of the United States in his private capacity, he therefore did it under colour of his office, there was no specification of New-Loans on the face of the abstracts, and no fund provided to pay them, the money must therefore have been drawn from the Treasury without any previous appropriation, or out of a fund otherwise appropriated, which is contrary to the constitution; he quoted the 21st section of the first article of the constitution of *Pennsylvania*. It is apparent from these facts and circumstances that the Comptroller-General knew when

when he made the certification, and unless an appropriation can be shewn, it will not be disputed that the New-Loans could be redeemed out of any other than the fund contemplated in the Act of the 10th of April, 1792. He repeated the reading of the second section, and said, that unless some other law can be shewn, which he knew nothing of, there was no fund, the section mentioned nothing of New-Loans, nay it appropriates the funds and excludes New-Loans; the sale of the three per cent. stock was co-extensive with its object. If therefore 986,000 dollars were only sufficient, and part directed for New-Loans, it would affect the other, and injure the proper state creditors; the honor of the state would be disgraced, as she promised payments and had not funds.

To prove that the money was reduced to Mr. *Nicholson's* possession, he read the Governor's warrants, Numbers 425, 451, and 462, July 9, 12, and 14, 1792.

The Treasurer appeared with his books to shew that the money was paid the 14th July, 1792, before the Register or the Governor knew any thing about the subscribability of New-Loans.

The consequences of this transaction aggravate the crime, Mr. *Nicholson's* gain on the whole was about 14 or 15,000 dollars, and the commonwealth lost 25 per cent.

Mr. *Morgan* read the 5th article, observing that he would substantiate the charge contained in this by respectable witnesses, they did not appear, and he moved for an adjournment, which was granted, with directions from the Speaker to be punctual.—The members of the House of Representatives returned to their chamber, and repeated the ceremony, as in page 214 and 215.

The letter of Mr. *Nicholson*, read yesterday in the House of Representatives (see page 200) was read the second time; and referred to Messrs. *B. Morgan*, *M'Lene*, *Evans*, and *Bowman*. It does not appear that they reported on it.

Third

Third day of the trial.

FRIDAY, FEBRUARY 28.

THE Senate met; and the members of the House of Representatives in committee of the whole repaired to the Senate-chamber.

At 10 minutes after eleven o'clock Mr. *Morgan* rose, having premised that his arguments the preceding days respected the first, second, third and fourth articles of impeachment against the Comptroller-General, that he would then proceed in order to the fifth.

That he would shew by the different statements of that officer to the Legislature in his official capacity, that he did not look upon New-Loan certificates as a State debt after the passing of the Act of March, 1789, as Mr. *Nicholson* made no mention of them in any of his communications.

That the Governor was of the same opinion.

The committees on Ways and Means of the same;
And the Legislature likewise.

That after the printed documents would be brought forward, he should then adduce oral testimony. He read part of the State of the Finances of the commonwealth as reported by Mr. *Nicholson* on the 7th November, 1787, in which Mr. *Nicholson* mentioned the New-Loans as an existing debt against the state.

That in all his communications previous to March, 1789, the Comptroller mentioned the New-Loans as an existing debt; and a total change of sentiment took place in him, in the Legislature, and Governor, after that period; because they conceived the law of March, 1789, had done away the claim which existed by the law of 1786, and the New-Loans were omitted in all their subsequent statements as no longer an object of Legislative consideration.

He

He observed that the Governor in his speech to the Legislature on the 10th December, 1791, did not mention New-Loans as a debt or claim on the state, and that he did not forget them, as he made mention of the payment of the arrears of interest due on them, for which provision is made in the repealing act of March, 1789.

He read part of the Governor's speech to both Houses on the 28th December, 1790, being the first session after the passing of the act of March, 1789, in which the Governor enumerated the aggregate of all the engagements of the commonwealth, and mentioned only the balance of interest due on the New-Loan debt; if they had been debts, he would not have executed his duty in omitting to state them, that funds might be provided by the Legislature for their redemption.

The same idea was pursued by the Governor in all his communications respecting the New-Loans.

The Comptroller-General himself, the committee on Ways and Means, and the other officers were of the same opinion. Mr. *Morgan* read part of the report of the committee on Ways and Means, Feb. 8th 1791, page 166 of the minutes, wherein the other debts of the commonwealth are mentioned and provided for, but not the New-Loans: Notwithstanding this is called a statement of all the debts of *Pennsylvania*, and added that every body put the same construction on that debt.

He read part of the statement of the Comptroller and Register-General of the 30th November, 1791, to the Governor, and observed that the Governor and the Secretary were betrayed into the part they had acted, and for proof of which he would call witnesses.

Alexander James Dallas, Esq. sworn.

Ques. by Mr. Ingersoll. Had there been any estimate made by the Comptroller and Register-General of the stock to be sold and debt to be redeemed, which estimate cannot be found at this time, and did or did not the
Comptroller

Comptroller ever hint that New-Loans were redeemable?

Ans. Immediately after the passing of the Act of the 10th of April, 1792, agreeably to direction from the Governor, I applied, by letter, to the Comptroller and Register-General, in the following words :

“ *Secretary’s Office, Philad.* 13th April, 1792.

“ GENTLEMEN,

“ BY the Act, entitled “An Act to provide for paying and redeeming certain public debts and for defraying the expences of Government.” The Legislature contemplates the payment of certain debts on the first day of July, next, by the sale of 3 per cent. stock, at a certain rate, with a power however to suspend the sale until the stipulated price can be obtained, you will be pleased therefore to take that Act into immediate consideration, and report what arrangements will be necessary, in your opinion, for carrying the redemption of the debt into effect. By order of the Governor,

A. J. DALLAS.”

TO the COMPTROLLER-GENERAL and
REGISTER-GENERAL of *Pennsylvania*.

Soon after this the Comptroller and Register-General joined in a report to the Governor on the subject, which the Governor perused, approved, and signed with the initials of his name; in consequence of which indorsement I returned it as an official document to the Comptroller or Register’s office as their authority to act, I do not know to which of them, not by myself, but by one of my assistant clerks, whom I ordered to take it and deliver it with his own hands.

When the subject was before the Legislature, an enquiry was made for this document, and, I think, sir, that application was made both to the Comptroller and Register to furnish it, after search in their respective offices, they answered, it *was* not be found among their records. I then strictly examined the papers in
my

my office, whether by some mistake or other, it had not been sent to the Comptroller or Register-General, after this search my mind was clear, that it had been transmitted to the officers above mentioned.

I wrote again by the direction of the Governor to the Comptroller-General and Register-General, (see page 226.)

On the 26th of the same month they united in a joint report to the Governor, (see page 227.)

Mr. Dallas *observed that he was not provided for being an evidence in this cause, that letters might be in his office, of which he might be totally ignorant, and if he should be unacquainted with such, or mistaken in dates or numbers he hoped to be excused, as he did not prepare himself to be a witness in this business.* The last estimate corresponded with the first, *I speak more from the conviction of my mind, than from the recollection of the document.* The Comptroller and Register's first estimate, was dated before the 16th of April, 1792, which directed the mode of carrying the Act of the 10th of April, 1792, into execution, supposed to be lost.

Ques. by Mr. Ingersoll. Did any communication, except in writing, pass between the Governor and the Comptroller-General respecting the stock to be sold and kind of debt to be redeemed, subsequent to the Act of the 10th of April, or whilst that business was pending before the Legislature?

Ans. Not to my knowledge; the Governor shewed me a plan of finance recommended by Mr. Nicholson, who requested him (the Governor) to submit it to the Legislature, I shewed it to some of the members, Mr. Gallatin for instance was one of them, who, if I understood him right, informed me he had seen and read it before, and refused to read it again.

Ques. by the same. Do you remember any conversation between yourself and Mr. Nicholson, respecting the redemption of New-Loans, or whether any intimation was made to you respecting the operation of that Act to embrace New-Loans?

Ans. On my first hearing of the redemption of New-Loans, I was much surpris'd, I called on the Register-General, same day I wrote to Mr. *Ingersoll*, (page 98-9), who appeared to be at a loss himself; I also called on the Comptroller-General, and asked him upon what grounds he was proceeding in the redemption of New-Loans; as it was my opinion they were annihilated by the Act of March 27th, 1789, except for the purpose of equalizing the interest for four years, and the re-exchange.

Mr. *Addison* was in the office at the same time, he introduced himself to me, I learned that his business there was, for the purpose of re-exchanging or redeeming New-Loans—Mr. *Nicholson* told me that he was sure he was right, and acting under the regular construction of the Act, but gave me no particular reasons for his proceedings.

I mentioned it to the Governor who directed me to get the Attorney-General's opinion on the subject, which was accordingly obtained, (see pages 100-1-2.)

Ques. by Mr. Ingersoll. Do you know any thing further on this business, or relatively to what passed between the Comptroller and Mr. *Addison*?

Ans. I understood that Mr. *Addison* had two New-Loan certificates either for re-exchange, or redemption, he came to my office, I shewed him the annihilating Act, and gave him my opinion on the same. Mr. *Dallas* retired to be called up again, if wanted.

John Donaldson, sworn.

Ques. by Mr. Ingersoll. Have you been called upon to render an estimate of the debt to be redeemed and stock to be sold about the 13th April, 1792?

Ans. About that time the Comptroller-General and myself received a letter from the Governor, directing us to render an estimate or statement of the debt to be redeemed, and of the stock necessary to be sold according to the directions of the Act of the 10th of April same year, for the purpose of redeeming that debt.

The

The documents on which this statement or estimate was made, were lying in the Comptroller's office, the estimate was drawn up there, I concurred in it, a calculation of the 3 per cent. stock contemplated to be sold, was annexed, or added to it; which was transmitted to the Governor, who approved of it, and it was returned, I believe, but do not know at this time, what became of it.

In December, 1792, being called upon by the committee of ways and means, for it, I turned to my letter book with confidence expecting to find it there, but could not, whether hurry of business, or what prevented me from copying it, I cannot tell. I went to the Comptroller's office, it could not be found there, we sat down and made out another from the rough papers which accorded with the first, to which I gave my signature.

Ques. by Mr. Ingersoll. Did that estimate contain a statement of all the stock to be sold and the debt to be redeemed?

Ans. It occurred so to us at that time.

Ques. Do you recollect the amount of the 3 per cent. stock entered in the second estimate?

Ans. I know it to be the same precisely in the first as in the second. (He read it.)

Ques. Did or did not the Comptroller intimate at any time to you his ideas, that New-Loan certificates were subscribable, if so at what time, and when was the date of the first warrant issued for the payment of such redemption?

Before the witness had time to answer this question, Mr. Rawle proposed that it would be better to state the matter generally.—Therefore the question was altered to this.

Ques. How was the redemption of State debts conducted.

Ans. As well as I can recollect when the debt was to be redeemed the party generally made out two copies of an abstract of the debt he possessed, these abstracts were sometimes printed and contained eight columns—

in the first column the date was inserted, in the second the number, in the third, the name of the person by whom issued; in the fourth, to whom issued; in the fifth, the commencement of interest; in the sixth, the amount of each certificate; in the seventh, interest computed to the 31st December 1791, or otherwise agreeably to the quality of the certificates; and the eighth or last, contained the total amount of principal and interest in pounds, shillings and pence.

That abstract was brought to the Comptroller-General to certify the genuine and assumable quality of the debt.

Ques. Were the certifications of *genuine* and *assumable* on both or only on one?

Ans. Sometimes on both, more from accident than design, as it was unnecessary.

Ques. by Mr. Wilcocks. You say, these abstracts were printed, where were they to be had?

Ans. At the Stationers.

Ques. Were there none to be had at the Comptroller's office?

Ans. I do not know.

After this certificate was obtained from the Comptroller, they carried that abstract and certificate to the Loan-officer of the United States, and there subscribed it to the loan opened in a book for that purpose; after making this subscription, the Loan-Officer gave them a duplicate of the abstract, and a receipt, which were brought to my office, and examined there, the interest calculated up to the time allowed by law, and an account was stated by me, State of *Pennsylvania* to ——— Dr., owing to the hurry of business it was divided between my Clerks and myself, they made the calculations of interest and additions, and I made the entries; or they made the entries, and I made the calculations and additions;—that calculation with the abstract was sent to the office of the Comptroller-General, a corresponding entry being made in my books.

Ques. Was you always able to make this?

Ans.

Ans. Being oftentimes much hurried, a person helped me in the calculations and castings; interests were calculated sometimes by myself, and sometimes by another, but the entries were for the most part made by me. I think it underwent an examination at the Comptroller's office, and in that case the abstracts were returned to me because I had not completed the returns of the particulars and different kinds of debt, but the gross amount: the Comptroller signed it, the same was brought to me, which I countersigned, and it was then sent to the Governor, who granted a warrant on the Treasury for the amount.

I recollect to have no conversation with the Comptroller respecting New-Loans, until after the date between the 14th and 17th July, 1792, when the abstracts No. 264, 265 and 266, and warrants had passed my office.

On this conversation a conference took place concerning this matter, wherein I agreed with him in sentiment, that the New-Loans were subscribable, redeemable, and embraced under the act of the 10th April, 1792.

Ques. Was it Mr. Nicholson gave you the information?

Ans. I received information out of doors, that New-Loans were contained in the abstracts, and was so well convinced, altho' I went to Mr. Smith's to see whether New-Loan certificates were included, that I afterwards passed several abstracts knowing them to contain New-Loans, for which warrants issued and were stopped in my hands, except one from Mr. Addison which I delivered him by mistake.

In my conversation with the Comptroller we referred to the several acts of the United States and laws of this commonwealth, the only difficulty which occurred was the delivery of the Continental certificates for which the New-Loans had issued—He answered it was a business of the United States, and that he either had, or would settle that business with the Secretary of the Treasury

fury of the United States. He also avered that a person (as a creditor) holding the certificate, had it in his power to do it, knowing that the suspension of interest was the only difficulty, and that that would only take place until certificates of the United States were rendered.

This was the substance, I do not recollect the precise or specific terms.

Ques. You mention that you stopped some warrants—relate that circumstance.

Ans. I stopped them in consequence of a conversation with Mr. *Dallas*.

Ques. by Mr. *Tilghman*. Where did the conversation with Mr. *Nicholson* take place?

Ans. I believe in my office. I think I had a conversation with him at his office door in consequence of receiving subscribable debt for three per cent. stock.

Ques. How was abstract No. 262 subscribed?

Ans. I recollect, that on receiving a debt, some were subscribable, I made out an abstract in my own name, which I afterwards made over to the commonwealth. I went down to Mr. *Smith's*, where I subscribed in blank for their amount, the hurry was so great in his office that he could not count them, this was on the 30th of June, as soon as Mr. *Smith* had leisure, some days after, he counted them, and found that they corresponded with the abstract, he gave his receipt, dated 30th of June, corresponding with the time I had subscribed, which also appears in his report. I think, but will not be positive, that Mr. *Nicholson's* name was there in blank on the books of subscription.

Ques. Have you the warrants here, which were stoppt in your hands?

Ans. Yes—here are four warrants and one certificate.

Ques. by Mr. *Ingersoll*. Will it require time to examine, or can you state the amount of all the proper state debt?

Ques. It will require time to examine. (*Retires.*)

Thomas

Thomas Biddle called up, and affirmed.

Ques. Do you know any thing of a certificate brought to the office of the Comptroller-General for exchange, and bought by him. If you do, please to inform the Senate?

Ans. In June 1792 I bought for my father from *Solomon Raphael* a New-Loan certificate signed by *Nicholson* and *Rittenhouse*, being one of those commonly called New-Loan, in the name of *John Thompson*. Three year's interest had been paid by the state on the certificate, and it was one of those endorsed between Sept. 1777 and March 1778—and bore interest on the nominal sum. The next day I sent *Jesse Morris*, a young man who lived with my father, to the State-Treasury, to receive the interest due thereon, he soon returned and informed me some difficulty occurred respecting it, that Mr. *Febiger* had stopped the certificate, and had sent Mr. *Reilly* his chief clerk to the Comptroller with it.

I therefore went to the Comptroller's office, met Mr. *Reilly* on the stairs, and he returned with me to Mr. *Nicholson's* room.

I was informed more fully of the circumstances by the Comptroller-General. I then recollected to have seen this described in an advertisement on a file of stolen and lost certificates usually hung up in Mr. *Nicholson's* office; and likewise in the newspapers. I enquired of Mr. *Nicholson* whether any loss respecting this certificate would accrue to Mr. *Biddle*.

Mr. *Nicholson* informed me that in a former case of the like nature, the person who held them, had amicably settled the matter, and letters were sent to *Thompson* respecting the certificates; likewise that he believed it would be no injury to Mr. *Biddle*, as it could be exchanged.

Upon this I turned to Mr. *Nicholson's* desk, took a blank exchange and filled it up, describing this certificate of *Thompson's*, which I purchased of *Raphael*, the business rested here, and I went home, and left both the certificate and exchange with Mr. *Nicholson*.

Ques.

Ques. Did or did not the Comptroller mention to you that the continental certificates for these were not in the office?

Ans. Yes he did, adding that they were loaned on bond to *Thompson*.

Ques. Can you describe it?

Ans. No, it is now a long time ago, I can't describe the certificate, the bill of parcels, which I got from *Raphael*, and the papers were lost during the disorder, and thereby the whole of the facts are deranged.

Ques. Do you recollect the date of either September 1777, or March 1778, to be endorsed.

Ans. Yes—and I wrote to Mr. *Nicholson* by the direction of my father the 5th day of July, 1792, who had been wholly interested in this business. (*Retired.*)

Clement Biddle, affirmed.

I had been in the habit of purchasing New-Loan certificates and entrusted that business principally to my son, about the latter end of June, 1792, I saw by the bills of parcels, that my son had purchased a New-Loan certificate from *S. Raphael*, who frequently brought in certificates, which I purchased from him at their current value; same time I observed that one year's interest was due, not apprehending any difficulty, I sent it to the Treasury to draw the interest.

Either that day, or the next, I do not recollect which, my son mentioned the circumstances, and the difficulty in the payment of interest, and exchange,—after which, on conversing with some friends, and considering the law, and knowing that it was payable to bearer; I was convinced that I could not suffer, the state had indemnified the holder, it must be exchanged, the law was passed, the state must make it good.

A few days after, not immediately, I came to Mr. *Nicholson*, and had, I believe, two opportunities, and spoke to him before the state-house; and I urged the exchange as there could be no exception to my right, he seemed to admit my right, but mentioned that he
had

had or must first write on the occasion, to Mr. *Thompson*, from whom it had been stolen. I mentioned the inconvenience arising from delay, and to the best of my knowledge, was turning off with an intention of going home. After I mentioned that, he answered, and proposed to give me the parts in stock, and to take it himself, which I considered as an accommodation, and by recurring to my letter book of the 5th or 6th July, I find that I wrote a letter or directed my son to do it, that I was obliged by his offer, and requested him to take the certificate and to transfer the parts which the same would yield; by recurring I find the certificate was for 800 dollars nominal amount subject to depreciation between September 1777, and March 1778, and three year's interest paid. I sent up that note: in a few days, and in the course of business I received the stock agreeable to the amount, I do not recollect the parts in stock. I had no idea then that New-Loans were subscribable, nor for some time after.

Quæf. by Mr. Wilcocks. You say that Mr. *Nicholson* offered the parts in stock?

Ans. If I had exchanged them I should have received original Loan-Office certificates on paying the interest or an equivalent in Indents, I should then have loaned them, and received the stock in 6, 3, and Deferred, which Mr. *Nicholson* transferred to me, and this I considered an accommodation in point of time, in going to the office, and usual routine of this business. When I urged my right, and desired an exchange, he offered to take it upon himself, and to transfer the parts, I had no idea for what purpose, or for what object?

Quæf. Do you know the date of your letter to him?

Ans. Yes; the 5th or 6th of July.

Quæf. Do you know the difference between the value of the parts you received and 20s in the pound, was it 25 per cent?

Ans. I can't tell, can't ascertain, I don't think it near that, I do not know, but will make up an account, sign it, and send it.

Ques. by Mr. Ingersoll. Did you take up that certificate out of the office, or custody of the Comptroller?

Ans. I did not.

Ques. Was it the same day, or the day after your son mentioned the difficulty, that you went up to the Comptroller-General's office?

Ans. It might be a week thereafter, or longer, I cannot ascertain. (*Retired.*)

Jesse Morris, affirmed.

I took a certificate from Mr. *Biddle's* to Col. *Febiger's*, where I presented it to Mr. *Reilly*, who took it from me, kept it, and carried it to the office of the Comptroller-General, I left it with Mr. *Reilly*, and went home, to inform Mr. *Biddle* of the difficulty, which occurred. I do not know the time.

Ques. What passed at *Febiger's*?

Ans. I gave the certificate to Mr. *Reilly*. (*Retired.*)

Mr. *Philip Reilly*, sworn.

Ques. Do you recollect Mr. *Morris* coming to you with a certificate.

Ans. Yes; the latter end of June, 1791, or beginning of July, 1792 I should say, a young man came from Mr. *Biddle's* with a New-Loan certificate for £.300, on looking over the certificate, I immediately knew it to be one of those stolen from *John Thompson* of *Buck's* county, the number was in the act of Assembly, Sept. 30th, 1791, for the relief of *Thompson* and others, (*Here Mr. Reilly read a part of the act, when Mr. Rawle told him never mind it.*) The State-Treasurer being out of town, I doubted whether I should pay the year's interest or not, and therefore went to Mr. *Nicholson's* office, and asked him whether I ought to pay it or not, observing at the same time, that it was one of those stolen from *J. Thompson*, which Mr. *Nicholson* also recognized; he told me that he would take the Attorney-General's opinion, and if that young man would call in the afternoon he would let him know about the interest.

That

And I never knew any thing more about it until I saw it in one of Mr. *Nicholson's* abstracts.

Ques. by Mr. Ingersoll. Was that abstract blank?

Ans. I went down to Mr. *Smith's*, and found Mr. *Nicholson's* name in the subscription book, no sum, the blank was not filled up.

Ques. What time was it?

Ans. I think it was the latter end of June.

Ques. Was it before or after you discovered that Mr. *Nicholson* had subscribed New-Loan certificates that you saw this blank subscription?

Ans. It was seven, eight, or ten days before it was generally known that he had subscribed New-Loans.

Mr. *Rawle* called Mr. *Reilly* back, and asked him, Did you deliver the New-Loan certificate into Mr. *Nicholson's* own hands?

Ans. I did.

(Retired.)

Mr. *John Oldden*, affirmed.

Being then desired to proceed, he said, as it is a good while since these transactions had happened, and as my memory may fail, I had rather answer questions.

Mr. *Oldden* was then desired to inform the Senate what he knew about this business, or had you any New-Loan certificates in the year 1792?

Ans. Yes; on or about the 4th of July, 1792, I had a number, suppose about seven or eight hundred odd pounds in New-Loan certificates, I, according to the usual practice made up an abstract, and took them to the Comptroller-General's office to be exchanged, presented the abstract and certificates in due form, and left them with the Comptroller as it was usual on such occasions.

Ques. by Mr. Lewis. For what purpose?

Ans. After presenting them, I expected the original Continental certificates in lieu of them, I asked when I might get the Continental certificates, the answer, as well as I can recollect, was, that I should have them the next day about the same hour, it was then about 12 o'clock. I went up the next day—(Mr. *Oldden* was desired

desired by Mr. *Lewis* to tell what passed in the mean time.) On the evening of the same day, I received a letter or note from the Comptroller, which note is lost, the purport of which was, that he would pay me an equal proportion and quantity of 6, 3, and deferred stock, and arrearages of interest for them, take the certificates himself, and save me the trouble of funding the Continental ones.

To this note I returned no written answer, but told the bearer that I would see the Comptroller the next morning and would complete and finish that business, and so the matter rested.

I saw the Comptroller the next day, I fancy, it must have been in the mean time, an idea struck me, that he could pay them into the Land-Office, and intended to ask him something more, don't know whether I went up twice or thrice, still not ready; and when I did the last time, I told him, if he would give me thirty dollars beyond what their value was, as I supposed they would be of more use to him, he should have them. To this proposal the Comptroller agreed, transferred the stock to me at Mr. *Smith's*, and gave me a check on the Bank of the United States for 155 dollars and 85 cents, and 30 dollars for my good will of the certificates, being in the whole one hundred and eighty-five dollars and eighty-five cents.

Ques. When you offered the certificates to the Comptroller for 30 dollars, did the Comptroller tell you it was too late?

Ans. I do not recollect, not certain, that any such thing was mentioned, it is a long time ago, the arrearages of interest and thirty dollars constituted the sum for which he gave me a check, and that was on the 7th of July, 1792, this I know from an entry in my memorandum book, the only written account, which I have of this transaction.

The abstract No. 262, was looked for, found, and shewed to Mr. *Odden*, and he was desired to inform the Senate whether his certificates were in it; he directly pointed

pointed to the eleven last certificates and said these are the certificates to which I referred in my testimony.

Ques. Did you see the abstract No. 262, in Mr. *Smith's* office or elsewhere?

Ans. No—I never saw that abstract until I had been called before the House of Representatives last year.

Adjourned until 11 o'clock the next day.

In the minutes of the House of Representatives the following entry is recorded :—

“ In conformity to the resolution of the 25th instant, the House resolved itself into a committee of the whole, in order to attend the trial of *John Nicholson, Comptroller-General.*

“ The Speaker quitted the chair and Mr. *Wyntrop* was placed therein.

“ After some time,

“ The committee of the whole returned.

“ The Chairman then left the chair and the Speaker resumed it.

“ The Chairman then informed the House that the committee of the whole had attended the trial of *John Nicholson, Comptroller-General.*

“ The committee appointed to manage the trial of the articles of impeachment against *John Nicholson, Comptroller-General* reported that they had made further progress.”

Fourth day of the trial.

SATURDAY, MARCH 1.

SENATE met pursuant to adjournment.

Mr. *Morgan* apologized for the unavoidable necessity they were under of postponing the trial, as it was out of their power to proceed to the 6th and 7th articles of impeachment as the testimony of two persons are closely connected, one of them was seriously indisposed, to procure whose testimony they had taken preparatory steps

steps, one of them, Mr. *M'Connell*, could be procured, the other, Mr. *M'Clenachan* was very sick and could not venture out, that measures were taken to have his testimony by Monday next, and observed that he expected this would be acceptable to gentlemen on the other side, as an amicable spirit of accommodation seemed to prevail among the parties concerned in managing this important trial.

Mr. *Tilghman* observed that he had no objection to the postponement for the reasons adduced by the gentleman manager, but he entertained some hopes that Mr. *M'Clenachan's* indisposition was not so great, but that he would attend, should the case be otherwise, and that he could not attend personally, he had no objection to to have his testimony taken in the manner proposed by Mr. *Morgan*.

Adjourned until Tuesday next 10 o'clock.

In the minutes of the House of Representatives the following entry is recorded :

" In conformity to the resolution of February 25th last, for the purpose of attending the trial of *John Nicholson*, Comptroller-General.

" The House resolved itself in a committee of the whole,

" The Speaker quitted the chair and Mr. *Erwin* was placed therein.

" The committee then proceeded to the Senate-chamber for the purpose aforesaid.

" After some time,

" The committee of the whole returned to their own chamber.

" The Chairman left the chair and the Speaker resumed it.

" The Chairman then reported that the committee of the whole had attended at the trial of the articles of impeachment against *John Nicholson*, Comptroller-General.

" The committee appointed to manage the trial on the articles of impeachment of the House of Representatives,

tatives, against John Nicholson, Comptroller-General, reported further progress."

Fifth day of the trial.

TUESDAY, MARCH 4.

SENATE met pursuant to adjournment.

Mr. Morgan,

Mr. Speaker and Gentlemen of the Senate,

Having gone through the five first articles of impeachment against the Comptroller-General of this commonwealth, it now remains for me to go on to the 6th and 7th articles, to understand these two, a considerable scale of important facts and corroborating testimony must first be attended to—If I have shewn that the Comptroller's opinion was, long before the passage of the Act of March 1789, that the New-Loans ceased to be a State debt, it will render his conduct more criminal, a retrospective view of a past transaction will add some information to what has been already advanced: in one of his reports on the state of the finances, dated October 1, and December 11, 1790; he had stated what debts were valid against the commonwealth and what were not.

Here Mr. Morgan read the report page 385, in the appendix to the minutes of 1790, containing what debts were to be discharged, and what were valid, agreeably to the report of the proper officers; that the present constitution allowed of no draughts from the Treasury except by previous appropriations made by law. But in page 389 in the 7th article of the finances are several subdivisions, wherein the amount of the principal and interest of the New-Loans are defined, and excluded from redemption in the Land-office, whereby they cease to be and are no longer a debt of the state. This is explained in express terms, page 395 that New-Loans were then excluded. Here then we rest our testimony

of the five first articles, these are objects of our accusation for plain and obvious reasons.

We now come to objects of greater moment, to impeachments of a deeper dye, as the articles are of greater magnitude the punishment is to be severer, inasmuch as the Comptroller as a faithful guardian to preserve the property of the public, did not lay his hands on the treasures of the commonwealth, for the purpose of saving the same, but made his official duty subservient to speculation. If the testimony already exhibited and arguments adduced, has made equal impression on the Senate as on the managers and on the House of Representatives, who are his accusers, the articles of impeachment will have the effect which the law and constitution require. (*Here Mr. Evans assisted Mr. Morgan in arranging the papers and preparing the parts to be read.*)

Among the various persons who came to the Comptroller's office to loan their certificates, we find the name of *Hans Hamilton*, in different progressions, and if I am RIGHTLY INSTRUCTED it will be proved that Loan-office certificates of the United States and New-Loan certificates were deposited with Mr. *Nicholson*, and both ultimately subscribed to the Loan of the United States.

It remains with the Comptroller-General to account for that procedure, if the Act had required the same Continental certificates to be returned, the case would be plain, and owing to the circumstances of both, the New-Loans and the other certificates having been subscribed by the same person a presumption is raised; and he should shew why they had not taken different courses. The moment that they ceased to be private property, they immediately became the property of the commonwealth, for the New-Loans and the Continental certificates could not be public and private property at one and the same point of time, yet both have been subscribed.

In the list of New-Loans certificates originally issued, book A, page 129—a certificate of £. 11 : 16, No. 4051, issued

issued to *Hans Hamilton*, same page, No. 4052 for £. 268, No. 4053, £. 242:7:6 making in the whole £. 522:3:6.

In the next Book A, stating what Continental certificates were received for the New-Loans issued, from which it will appear a small error of $\frac{2}{3}$ only excepted, that they agree exactly. Continental certificates with their numbers, &c. are as follows:—

No. 8316	Dolls. 31	42	
8317	714	60	
8318	212	36	Interest 1st May, 1781.
8319	60	68	Interest March, 1780.
8320	32	60	
8321	78	76	
8322	70	60	Interest November, 1780.
8323	191		Interest Aug. 27, 1781.

1392 02

These last have been subscribed by the Comptroller-General in the name of *Hans Hamilton*.

To prove that the Continental certificates thus deposited exactly corresponded with the New-Loans, I have in my hand a certificate from the Register of the Treasury signed by *Joseph Nourse*, March 4th, 1794, by which it appears that the Comptroller-General had subscribed by the Act of August 4, 1790, the certificates issued as aforesaid.

It thus appears, that the first therein, corresponds exactly with the second in the other, in numbers, names, dates, commencement of interest, and total amount; the correspondence between them is best ascertained by going over the abstract, and examining the same, and, by comparing it with the Comptroller's books. I will now proceed to shew the New-Loans were also subscribed—No. 4151 *Hans Hamilton* £. 11 16 0

4152 do. 268 0 0

4153 do. 242 7 6

These three last contain the whole of the Continental certificates in the above statement; so that it appears

Hans Hamilton came forward and had New-Loans issued for his Continental ones, two evidences of the same debt—this inconvenience would not have happened if the intention of the Legislature had been pursued. After the law of 1789 the New-Loans were only a receipt or claim to get back the Continental certificates; by this means a duplication of debt had been brought against the United States, contrary to what the Union and *Pennsylvania* had contemplated. This is the only testimony now in our power, it remains with the Comptroller-General to shew and explain; it is manifest that we had two debts instead of one, the certificates of the United States and those of *Pennsylvania*, it is in his power to satisfy the Senate if his books were kept in the manner in which they ought to have been—if this transaction is not cleared up, the presumption is that something is unfair and unworthy of this officer.

To shew however by as direct testimony as the circumstance of this case will admit that the Comptroller-General has made use of certificates brought to, and deposited with him for re-exchange which he afterwards subscribed to the Loan of the United States.

The circumstances which both points are briefly to prove, are these; that *Matthew M'Connell* furnished or sold a certificate for £. 3275 : 19 : 4, to *Blair M'Clenachan*, which is among those subscribed by *Mr. Nicholson* in his grand abstract. The presumptive testimony will be strong, that the Comptroller received this certificate in his official capacity, and that he afterwards took it to his own use: The first witness whom we shall call on this subject is *Matthew M'Connell*.

Mr. Matthew M'Connell, sworn.

Ques. Did you ever sell or transfer that certificate or one of a similar amount, to *Blair M'Clenachan*?

Ans. I delivered a certificate of the same amount with the one, now, in my hand, to *Mr. M'Clenachan*, viz. for £. 3275 : 19 : 4, on the 23d day of April 1788, as appears by an entry in my books.

Ques. Do you recollect whether it was in your name?

Ans.

Ans. It appears from the entry that it was in my own name, neither number nor date is recollected by me, nor mentioned in my memorandum-book.

Ques. Was it paid or sold to Mr. M^cClenachan ?

Ans. It was delivered to Mr. M^cClenachan agreeably to an engagement or contract, he delivered me some certificates for which I was to deliver a certain quantity of another kind to him.

Question by one of the counsel for the defendant. When did this happen ?

Ans. I delivered him more certificates at the time alluded to, and afterwards.

Ques. How long afterwards ?

Ans. I hold in my hand a list of fundry certificates which I had delivered to him in 1788—amount not cast up, they are extracts of entries from my books. This list I delivered the House of Representatives last summer. The first parcel was delivered in the year 1788—I do not know when I delivered those in 1789.

Mr. Tilghman requests to have the list—Mr. M^cConnell retired.

Mr. C. Febiger, sworn.

Mr. Morgan stated what this witness was to prove;—that on the 15th Sept. 1790, Blair M^cClenachan received the interest, first came to have the certificate entered, there had been no money in the Treasury when he came, the first time; made the following entry on the stairs, viz. £. 3275 : 19 : 4, on the 15th Sept. 1790 he received £. 150 on account of interest. The entries were made in the books March 6th and 11th 1790.

Question by the Speaker to Mr. Febiger. Are persons under any difficulty in getting their money out of the Treasury ?

Ans. Money is not always in it.

Question by Mr. Ingersoll. Was the sum and number entered in your books when the identical certificate had been before your view from which you might conveniently enter the same ?

Ans. The certificate was entered the 11th March 1790.

Question

Question by the same. I observe on the preceding page of your book the date March 6th 1790, and it then continues three pages and the date is March 16th 1790?

Ans. The money was paid and receipt given Sept. 15th 1790.

Question by Mr. Lewis. Had Mr. *M'Clenachan* the certificate with him when he received the interest?

Ans. No.

Mr. Hilary Baker, sworn. (*Gallery of the Senate very thin.*)

His deposition amounted to this; that he saw *Blair M'Clenachan* on Saturday the first of March instant, appeared to be much afflicted with the gout, that he was rolled about in an armed chair, from one part of his room to the other, that in every other respect he appeared to be in good health; the deponent left *Germantown* early on Sunday morning before Mr. *M'Clenachan* was up.

Mr. Evans, one of the managers, observed that *B. M'Clenachan*, the witness, was summoned by Mr. *Martin*, the Serjeant-at-Arms of the House of Representatives, and wished to have him sworn, he was called, some delay occurred whilst the Senate waited for him, after some time he came forward, and was sworn. His deposition was, that he had seen Mr. *M'Clenachan* at his house in *Germantown* the 25th of last month, shewed him the summons, which required his attendance before the Senate, that he attentively read the same, and told Mr. *Martin*, that he communicated all that he had to say on the subject, to Mr. *Morgan*, Mr. *Evans* and Mr. *Bowman*, in the presence of Mr. *Nicholson*, that he was glad Mr. *Nicholson* had been there, that he (*Nicholson*) might know that there had been no undue means used against him: that his hands and feet were swelled, was rolled about in an arm-chair thro' the room; that he would not keep the writing but desired the Sergeant to take it with him; adding you may perhaps have occasion to present it when you'll have to render an account of this business.

Mr. Morgan observed, how they had taken all means in their power to procure the *viva voce* testimony of the witness,

witness, was proceeding to read the interrogatories and answers. Whereupon the Speaker asked him was it by the unanimous consent of the defendant's counsel—and being answered in the affirmative, he then stated how the commission issued to the two magistrates, &c. and began the reading as herein after set down, Mr. Rawle read the interrogatories, Mr. Morgan the answers.

To the honorable the SENATE of the commonwealth of Pennsylvania,

WE the subscribers, appointed to take the answers of *Blair McClenachan*, Esq. on oath to several interrogatories committed to us in writing, to be proposed to him, relative to an impeachment made before your honorable House by the honorable the House of Representatives of the commonwealth aforelaid, against *John Nicholson*, Esq. Comptroller-General of the said commonwealth, do respectfully certify that on this first day of March, Anno Domini one thousand seven hundred and ninety-four we repaired to the dwelling house of the said *Blair McClenachan* at *Germantown*, in the county of *Philadelphia*, and communicated to him the several interrogatories aforelaid, which are hereunto annexed; and that the said *Blair McClenachan* then and there, after having carefully and attentively read, examined and considered the said several interrogatories, did on his solemn oath on the Holy Evangelists of Almighty God, to him by us duly administered, declare unto us his answers to the said several interrogatories in the words following—that is to say:—

Inter. 1. on behalf of the state. Were you at any time proprietor of a New-Loan certificate issued by the State of *Pennsylvania* to the amount of £. 3275 : 19 : 4 ?

Ans. 1. It is probable that I had a certificate of that amount, but I cannot be certain thereof as I had several large ones, and did not make out any account or list of my certificates when I delivered them to Mr. *Nicholson*; but it may probably be found on examining the books of Mr. *Rittenhouse*, the late State-Treasurer, what certificates I received interest on.

Inter.

Inter. 2. Did you sell or lend such certificate or deposit such certificate, at any, and what time, with, or to *Matthew McConnell*?

Ans. 2. I never, to the best of my knowledge, either sold or lent to, or deposited with *Matthew McConnell* a certificate of the amount of £. 3275 : 19 : 4, but I did lend him a number of small certificates, (amounting in the whole to upwards of £. 3000) a considerable time before I delivered my certificates to Mr. *Nicholson*,—my son will furnish you with the exact sum from a memorandum made by me in a book at present in his possession.

“SIR,

“I HAVE sent you the memorandum of those certificates which my father lent to Mr. *Matthew McConnell*, it is in his own hand-writing, and the leaf which I enclose containing the whole sum.

Sir, your ob. servt.

GEO. M'CLENACHAN.

Certificates lent *Matthew McConnell*, Broker, Second-street.

No. 17795	January, 85	£. 1350	0	0
2353	November, 84	328	9	9
13285	January, 85	169	17	6
16864	do. 85	201	11	3
11940	do. 85	99	11	3
13065	do. 85	6	11	3
12616	do. 85	44	8	7
16935	do. 85	203	12	6
13719	do. 85	228	6	1
16863	do. 85	398	8	9

£. 3030 17 0

The above certificates delivered to Mr. *McConnell* the 30th of March 1789, to be returned when demanded.”

Inter. 3. Did you afterwards, and at, or about what time

time receive such certificates back from *Matthew McConnell*?

Ans. 3. As I did not lend Mr. *McConnell* a certificate of £.3275 : 19 : 4 I could not receive one from him in return—the amount of the small certificates which I lent him, he did return to me.

Inter. 4. Did you take such certificate to the office of the Comptroller-General for exchange pursuant to Act of Assembly of March 27, 1789?

Ans. 4. I took all the New-Loan certificates that I possessed (which were to a very considerable amount) to the Comptroller-General and delivered them to him to be exchanged, without having made any list or account of them.

Inter. 5. Was such certificate exchanged by the said Comptroller-General, and did you receive in lieu thereof Continental certificates of equal value to the same as those you originally loaned to the State?

Ans. 5. I received from the Comptroller-General Continental certificates, to the full amount (as I suppose and as he informed me) of the New-Loan certificates which I had delivered him.

Inter. 6. Did you ever sell any certificates to *John Nicholson*, the Comptroller-General or any other person?

Ans. 6. To *John Nicholson* I never sold any certificate, to others I did sell.

Inter. 8, proposed on the part of the defendant. If the answer to the 4th interrogatory on the part of the commonwealth should be in the affirmative, at what time did you take such certificates to the office of the Comptroller-General for exchange pursuant to the Act of Assembly of 27th of March, 1789.

Ans. 8. I took no account of either the number or value of the certificates, nor of the time of delivering them.

Inter. 9. If the answer to the first part of the fifth interrogatory on the part of the prosecution should be in the affirmative, at what time was such certificate so exchanged by the Comptroller-General?

Ans.

Ans. 9. I cannot tell.

Inter. 10. If the answer to the latter part of the fifth interrogatory aforesaid should also be in the affirmative, at what time or times did the same take place, and whether the certificates were received by you at one time or oftener, and whether the certificates you so received were all those for which your New-Loans had been originally granted, or whether they were all at the time of such delivery, and until received by you, the property of the State of *Pennsylvania*, or whether any part of them were, or were not at the time, as aforesaid, the property of *Mr. Nicholson*?

Ans. 10. I do not recollect whether I received them all at one time or oftener.—Of the certificates dated between first September 1777 and first March 1778, I believe I received back the identical certificates for which New-Loan certificates had been granted—but as to those of other dates, I cannot tell; and until I received those certificates in exchange for the New-Loan certificates, I considered them as the property of the State, and no part thereof whatever as the property of *John Nicholson*.

Inter. 11. If the answer to the 6th interrogatory should be in the negative, did you never *barter* nor *commute* with *Mr. Nicholson* New-Loans for other certificates, if you did so barter or commute, set forth the particulars at large how, when, and for what?

Ans. 11. I never bartered nor commuted with *John Nicholson* any New-Loan or other certificates in the whole course of my life.

Inter. 12. Did you or did you not, and if so at what time inform *Mr. Nicholson* that you wanted to raise some money out of certificates, but that you were determined not to part with the principal at less than 20s per pound, that you did not expect the interest or indents would appreciate so much, and did you or did you not then ask him to give you a sum in indents for said purpose, and if so, how much and what amount of interest thereon, and where did this take place—and
were

were there New-Loan certificates accompanied with the usual abstract or account for exchange, and did you, or did you not apply to Mr. *Nicholson* the same time for indents, before you received the Continental certificates, and if so at what time, and did he then give you a further sum of indents on account, and if so what sum, on what account, and how did you dispose thereof.

Ans. 12. When I delivered my certificates to Mr. *Nicholson*, there were many persons from the country at his office, desirous of having their business speedily done—I told Mr. *Nicholson* I was willing that the country people should be first served, and that he might settle mine at his leisure, but as that would probably take up some time, I requested him to furnish me in the mean time with some indents on account, to which he assented, and I received indents from him at several times before I received the Continental certificates, but do not recollect the amount of the indents received at any one time, nor in the whole.

Inter. 13. Did or did not he, Mr. *Nicholson*, at your first application mentioned in the last preceding interrogatory inform you, that if the said New-Loan certificates were to be exchanged with the state you would have indents to pay and not to receive—and did he, or did he not say that he would notwithstanding accommodate you with the sum you wanted, in indents, on account of the same New-Loan certificates—and did he or did he not deliver you a sum at that first time aforesaid in indents, and if so, how much and in what manner did you dispose thereof?

Ans. 13. On the final settlement of my account with the state, a balance of 4146 dollars and 24 cents in indents appeared against me, which in the summer of 1793 I requested Mr. *Nicholson* to pay to the State on my behalf, and by his account rendered me, it appears that he has done it.

Inter. 14. Did you or did you not at that time receive the Continental certificates therefor equivalent, and did you or not at a subsequent period, and if so

at what time thereafter apply at the office of the Comptroller-General with the remainder of your New-Loan certificates, and did or not the Comptroller-General receive them, and set down with you in his office and prepare an account thereof for exchange, and does the account numbered 1838, and 183, and 184, herewith presented to you, appear to be the same accounts, and did you, or did you not then request him to draw the indents for you, which after exchange would be receivable on your Continental certificates, and did you, or did you not receive those certificates afterwards, and if so, at what time?

Ans. 14. I recollect that I requested Mr. *Nicholson* to draw the indents on my account from the United States, which he did, but the time I cannot recollect.

The remainder of this interrogatory is answered by my answer to the 10th interrogatory.

Inter. 15. Did you, or did you not afterwards, and if so at what time apply to Mr. *Nicholson* to pay in your behalf the balance of indents or 3 per cent. stock, which still remained due by you to the state on the exchange mentioned in the last interrogatory, and to what amount, and did he or did he not inform you he would do so—and hath he or hath he not since rendered you an account thereof.

Ans. 15. The answer to this is contained in my answer to the two last preceding interrogatories.

Inter. 16. Was there a considerable time between the time of exchanging and also between the time of funding your different certificates—and if so, how long?

Ans. 16. I cannot recollect.

Inter. 17. Have you any account of your New-Loan certificates to which you can refer; or hath this transaction rested only on your memory—have you kept a regular account of your New-Loan certificates, and how, to whom and at what time, and for what were they disposed of, if any, produce the same, and annex them to your answers.

Ans.

Ans. 17. I kept no account whatever of, or concerning my certificates.

Inter. 18. Hath your memory at all times since you have been called to answer to these points uniformly retained the same view of them?

Inter. 19. Did you, or did you not at any time since you gave your testimony on this subject to the late House of Representatives express to any person an idea that you had forgotten said testimony, and your apprehension that if you said any thing on the subject, it might be inconsistent with some part of the evidence you had so given?

Inter. 20. Do you know in what manner you became possessed of each and every of your other New-Loan certificates, or any of them, if so, name the certificates, of whom purchased, or commuted, and when?

Inter. 21. If the answer to the first interrogatory be in the affirmative, when and of whom did you purchase the certificates therein mentioned, and how did you become possessed thereof?

Ans. to Inter. 18, 19, 20, 21. These four interrogatories I conceive are not entitled to answers.

 *The first 6 interrogatories and answers were on behalf of the prosecution—from thence to this, are interrogatories for the defendant.*

Inter. 7 for prosecution. Did you not exchange several New-Loan certificates at different times at the Comptroller-General's office? Were or were not the papers termed "exchanges" always filled up on such occasions? Did you on such occasions sign a receipt in a book for the Continental certificates you received, do the exchanges annexed to the present interrogatories numbered 1838, 183, 184, contain an account of all the certificates exchanged by you at the said office, or did you exchange others not included therein?

Ans. 7. I do not recollect having given any receipt to Mr. Nicholson. The answer to the remainder of this interrogatory is contained in the foregoing answers.

Inter. 8. If you did exchange New-Loan certificates
other

other than those mentioned in the said abstracts numbered as above, is the annexed New-Loan certificate numbered 17748 for £. 3275 : 19 : 4 one of those which you did so exchange, and is it the identical certificate to which you refer in your answer to the first interrogatory ?

Ans. 8. The answer to this is contained in the answer to the first interrogatory.

Inter. 9. If you answer the second interrogatory in the negative, did you or did you not lend any other certificates of New-Loan to *Matthew McConnell*, and at or about what time ?

Ans. 9. The answer to this is contained in the answer to the second interrogatory.

Inter. 22, *pro defendant*. If the answer to the first member of the 7th interrogatory on the part of the prosecution be in the affirmative, at what times were those respective exchanges made, if the days or months or years be not remembered, attach to it the time as near as you can to the beginning or end of the first loan of Congress, and the distances of time between these exchanges ?

Ans. 22. Having kept no accounts concerning my certificates I cannot recollect the times.

Inter. 23, *pro defendante*. Did you or did you not hand to Mr. *Nicholson* when you were with him on the street in the city of *Philadelphia* some New-Loan certificates, and if so, what numbers, amount, and sums respectively, and also at what time, and what request did you then make of Mr. *Nicholson* ?

Ans. 23. I do not recollect having delivered Mr. *Nicholson* any certificates at any other place than in his office—nor do I remember having made any request of him except what I have before mentioned concerning the indents.

Inter. 10, *for prosecution*. Do you know any thing further that may be material in the cause ? If yea, relate the same as fully as if you were particularly interrogated thereto ?

JARED INGERSOLL.

Ans.

Ans. 10. I have only to observe, that after the funding law of this state was passed in 1785, I took *all* the Continental certificates I was possessed of, without knowing either the number, or amount of them (as I had no account of them in my books) and without making any list of them, delivered them to Mr. *Nicholson* to have them funded:—and after the law of 1789 I delivered all my New-Loan certificates to him in the same manner, to have them exchanged, without knowing either the number or value of them—placing the highest confidence in Mr. *Nicholson's* integrity.

The truth of which several answers the deponent further corroborates by setting his name hereunto.

BLAIR M'CLENACHAN.

In testimony whereof we have hereunto set our names the day and year first within written.

HILARY BAKER,
JACOB SERVOS.

 The committee of Accounts of the House of Representatives reported on the 22d April, 1794, eleven dollars and 57 cents to Mr. *Baker*, and eight dollars to Mr. *Servos* for taking the deposition of *Blair M'Clenachan*, and for their expences to and from *Germantown*.

Mr. *Morgan* then read the following account:—

“ *Blair M'Clenachan*

to *John Nicholson*, Dr.

“ A balance due in indents on exchange thereof with the state per account March 27th, 1789, and which he paid to the State July, 1793 - 4146 $\frac{24}{100}$

at 9/6 per pound 1969 45

Arrears of interest from Jan. 1791,

2 $\frac{1}{2}$ years - 51 82

2021 27

A true copy of *John Nicholson's* account
rendered to me

BLAIR M'CLENACHAN.”

Mr.

The second and third articles are fully proved by the abstracts and other official documents which had been produced, and by the same testimony with the foregoing, all as fully as the nature of the case could admit.

The fourth article is rather a deduction from the other three, by his certification he contemplated the withdrawing a large sum of money from the Treasury without any previous appropriation, by which 63,000 odd dollars were drawn from the coffers of the state—which is contrary to the Constitution of this commonwealth, and a charge of high misdemeanor against the defendant.

The

no loss accrued to the state, who only paid what they had promised and engaged to pay, and that it was of little importance to their faith and integrity what might be the market value of the public securities of the United States which they had received in exchange for the New-Loan certificates.

The defendant also contended that the calculation was unfair and below the value of the stocks of the United States in the market at the time of the subscription which he stated to be as follows, and referred for a confirmation of his statement to the price current of brokers in the city at the time, viz.

Dr.	The sum paid by the State as stated above, - £.22499			
	The principal of all the subscriptions paid amounted to £.18,092 : 9 : 5			
	$\frac{2}{3}$ of the Continental certificates received therefor, amounted to			
	£.12061	13	0	6 per cents at 22/6 13569 7 1
Deferred stock,	6030	16	5	at 13/2 3367 4 0
The remain. 3 per cents.	4406	10	7	at 12/9 2809 3 3
	22499 0 0			
Add $1\frac{1}{2}$ years interest on	£.12061	13	0	
6 per cents. and	£.4406	10	7	of 3 per cents.
from January 1791, till July 1792				-
				1283 16 10
				21029 11 2

Sum which the State would have been in advance after paying her New-Loans afore said had she then funded and sold the Continental certificates which she received in the New-Loans from the former creditors

1469 8 10

The Editor would have been happy to have also given the statement promised by Col. Biddle. See his evidence at foot of page 241. But if it was furnished the prosecution did not bring it forward, it was not read or offered during the trial, nor hath it come to his knowledge.

The evidence in support of the fifth article is full and explicit. He purchased by himself or agents, as well from those who came to the office, as from others, that all this is done the testimony of Mr. *Oldden* confirms, he went or sent to the office, a certificate was left by Mr. *Riley*, Mr. *Nicholson* sent proposals to *Oldden*, at length Mr. *Oldden* consented, and sold his certificates, these transactions and other testimony come fully to the point. Mr. *Oldden's* testimony will also apply to the sixth and seventh articles. (*He read the sixth article.*) These are more criminal than the preceding ones; *McClenachan's* testimony will apply to these, the certificates became the property of the state the moment they were placed in the hands of the Comptroller-General. They were neither the property of *Oldden*, *McClenachan*, or *John Nicholson*. None of those persons could use them for their own purposes. If he hath converted them to his own use, he has done a great injury to the commonwealth, and it is a bad precedent. (*Here he read the seventh article.*) From all which it is plainly proved that he is guilty, that all this had been done is manifest from his abstracts in his own hand writing, from oral and written testimony, from the warrants presented to and paid by the Treasurer, the state sustained an immense loss—which loss, though great, the inconvenience is still more considerable. (*He then read the letter, page 102-3.*)

Here (Mr. *Morgan* observed) the Secretary entered into a disquisition of those measures adopted by the states, who have issued their own certificates—in which case he ordered the payment of interest to be suspended for a time, so that it appears that *Pennsylvania*, who had issued her own certificates, had been under the necessity of making an arrangement, such as herein set forth, to prevent the payment of interest twice; this measure was not attended to. The Comptroller was well acquainted with it—this alternative occasions a double subscription to compleat the measure, as in the case of *Blair McClenachan* who subscribed his original certificate to the domestic

meftic loan, and the Comptroller fubfcribed to the ftate loan.

Thus the Comptroller-General has drawn fixty-three thoufand, odd hundred dollars, without any previous appropriation from the Treasury of *Pennfylvania*, by which fhe has loft above five thoufand pounds fpecie; becaufe the Continental certificates are fo much lefs when divided into fecurities: The difference between twenty fhillings in the pound and the current value of the different parts of ftock creating that fum.

I will conclude by obferving that as it was the public good and not any acrimony againft an individual, hath moved us to institute the prefent profecution; I hope the decifion will be fuch as the good of the ftate, public juftice and equity require, and that it will be conducted with temper and moderation.

☛ Mr. *Morgan* fat down, having been on the floor nearly fixteen hours during five days.

Mr. *Tilghman* obferved that the hour of adjournment approached, that it would be better to adjourn, as the time could not be fufficient for him to open the defence, that the view would be broken and disjointed, that the Comptroller had been fo bufy that the papers were not well arranged, and he expected to have the documents in proper order by ten o'clock the next day.

Adjourned.

In the minutes of the Houfe of Representatives the following entry is recorded:—

“ In conformity to the refolutions of the 25th February laft, the Houfe refolved itfelf into a committee of the whole, in order to attend the trial of *John Nicholson*, Comptroller-General of this commonwealth, now depending before the Senate, on the articles of impeachment exhibited againft him by the Houfe of Representatives.

“ The Speaker quitted the chair and Mr. *Wynkoop* was placed therein.

“ The committee then proceeded to the Senate-chamber for the purpofe aforefaid.

“ After some time,

“ The committee of the whole returned to their own chamber.

“ The Chairman then left the chair and the Speaker resumed it.

“ The Chairman then reported that the committee of the whole had attended the trial of the said *John Nicholson*.

“ The committee appointed to manage the trial of the articles of impeachment against *John Nicholson*, Comptroller-General reported that they had exhibited the several charges against him and produced the necessary evidence in support thereof before the Senate.”

Sixth Day of the trial.

WEDNESDAY, MARCH 5.

SENATE met, court called, &c.

Mr. *Morgan* rose—

Mr. SPEAKER and GENTLEMEN of the SENATE,

Before the Counsel for the defendant begins, I rise to shew that Mr. *Nicholson* did not keep his books of exchanges agreeable to the instructions of the Supreme Executive Council, this I think necessary, to shew that if the evidence on behalf of the prosecution is not so compleat as it should have been, it is not owing to our fault but to the defendant's neglect, who did not keep his books conformably to the following instructions.

“ In COUNCIL.

“ PHILADELPHIA, *Thursday*, May 21st, 1789.

“ Upon the second reading of the report of the committee on the mode of exchanging the New-Loan certificates. It was resolved that the following instructions be given to the Comptroller-General,

“ SIR,

“SIR,

“TO facilitate the exchange of certificates agreeably to Act of General Assembly of the twenty-seventh day of March last, Council have judged it proper to give you the following instructions, viz.

“1. Every person who in conformity with the said Act shall present to you a New-Loan certificate, may at his option receive from you the Continental certificate or certificates, for which the New-Loan certificate was granted, or receive a like sum of principal in certificates of debts of the U. States, which have been paid into the Land-Office.

“2. When New-Loan certificates have been cancelled and several certificates have been by you given for the amount thereof, to enable the party to make payment to the Land-Office, &c.—and where one or more of the latter shall be presented as part or parts of such New-Loan certificate, the person presenting the same may in lieu thereof receive so many of the original Continental certificates as shall be equal to, or nearest, it, and under the amount of the New-Loan certificates so presented.

“3. In those instances in which it may be impracticable for you to make the exact amount of a New-Loan certificate or certificates with Continental certificates, you will issue a new certificate or certificates, bearing similar interests for the balance or balances.

“4th. In a set of books to be prepared for the purpose, you will keep exact and fair accounts of all certificates you may receive, deliver or issue, with their numbers, principal sums and dates of interest.

“5th. That the balance of interest to be received or paid by the state according to Act of Assembly, may be ascertained, you will calculate the arrears of interest which may be due on all New-Loan certificates you may receive as well as on all Continental certificates you may deliver.

“6th. You will receive indents or facilities for all balances of interest as may be due to the state, and out
of

of the indents or facilities you have received or may obtain from the United States, upon the Continental certificates in your possession, you will pay such balances of interest as may be due from the State.

“ 7th. You will keep exact accounts of all indents so received, in books prepared for the purpose.

“ 8th. If you consider it necessary to your own security or to the regularity of your proceedings in the premises you will demand receipts from all persons to whom you may deliver certificates or indents as well as require vouchers of the certificates or indents which may be delivered or paid to you.

“ 9th. In the first Wednesday in every month you will produce to Council for their inspection the books in which your transactions relative to the exchange of certificates according to Act of General Assembly of the 27th day of March, 1789, are contained.

“ 10th. If any difficulty or obstruction should occur in the execution of the duties required of you by the Act above mentioned of the 27th day of March last, or by the foregoing instructions, you will represent the same to Council, that such difficulty or obstruction, if possible, may be obviated or removed.

“ You will have the foregoing instructions set up in your office for the information of all persons concerned.

Mr. Tilghman.

MR. SPEAKER and GENTLEMEN of the SENATE,

When or how impeachments began in England, or for what purpose, and whether this mode, like engines, are made use of for power or faction, is immaterial. Here they form a part of the Constitution of this commonwealth. There hereditary nobility command respect. Here the Comptroller meets the charge, and he is to be tried by his peers. The tribunal is great, and the cause of importance. The defendant meets the impeachment conscious of his own innocence, he never shrunk from it, he at first proposed a question to be argued before the Supreme Court, (see page 82) he is
impeached

impeached in the name of the people of *Pennsylvania*, the House of Representatives is the grand inquest of the nation. The Senate will judge without any regard to the impressions made on the House of Representatives. The Comptroller is here in the same situation as any defendant in a common law court. The grand jury found the indictment, the Senate as a jury is sworn to try the indictment. Lord *Mansfield's* expression on this occasion is worthy of notice, That the juror's mind should be like "*blank paper*," free from any impressions but that of the evidence. That the late House of Representatives and the Managers were actuated by the purest motives, and the present House also, I have no doubt, but from what source this impeachment springs time only will discover. Public bodies are liable to be acted upon when the object in contemplation is to acquire public good or great public evil; the public good is a fascinating consideration to carry on a prosecution. The good intentions of the House is not doubted, but this goodness might make them liable to be easily acted upon. Popular bodies are easily warped by an artful individual when he meditates the ruin of his neighbour, and impresses an idea on the Assembly that he has the public good at heart.

Objections have been made against commonwealths and popular governments on this account—*Socrates* and *Phocion*, some of the greatest men of antiquity, fell thro' the mistaken zeal of popular bodies: no doubt the Assemblies who convicted them, thought that they had condemned them for the public good; and now these Assemblies are cursed and their memory held up to public execration. But no objection with us. The subject on which I have the honor to address you, has not been very familiar to me, having no knowledge of it but what I collected since I have been retained by the Comptroller. Its branches are various, requiring much perspicuity and a thorough acquaintance with the subject. The Comptroller throws himself on the candor of his Judges, he has always acted from a proper construction

struction of the Act, or not. If he has, he cannot be guilty, and it is no proper subject of impeachment, if he had not, it is a subject of enquiry whether such construction was his known opinion or basely contrived. If he put a bad construction on it, we should enquire, Whether the guilt is from the heart or from the head. The consequences are removal from office, utter incapacity to hold any post of honor, profit, or trust—the charges ought to be clear and perspicuous—they are not so perspicuous [*the first article read.*] There is a point in this article that mentions he did subscribe at *various times*. I do not know to *whom*, nor did I know till the opening, there are some certifications, but none in his own case—should there be any obscurity in our defence it is to be attributed to this, to whom did he declare them to be subscribable? it wants certainty.

[*2d article read.*] “*Declare*” without saying to whom, total want of certainty, entirely omitting to whom or at what time.

[*3d read.*] This wants certainty likewise as depending on the first and second, which are in their own nature, uncertain.

The fourth article is stated by the Manager as a deduction from the former articles. If the former articles want certainty, this being deduced will consequently be void of certainty likewise.

The fifth is so vague, it requires no comment.

The sixth read. I confess myself at a loss for the meaning of this charge, whether it is meant that Mr. *Nicholson* took them without paying value for them, and then subscribed them to the loan of the United States, or whether he did after lodgment pass value for them.

The seventh states more explicitly, but don't express whether Mr. *Nicholson* paid value for them or not, an exchange is completed, and he subscribed them, I suppose they will explain themselves by and by.

In charges of such serious tendency, the particular objects should be pointed out—That certainty and perspicuity which are so necessary in indictments in common

mon law courts not altogether requisite, that precision and critical nicety required in the courts of Justice would be too much in this particular, but these articles are too vague, too doubtful, too uncertain, we are not bound to answer these charges; the charge must be definite and according to the laws of the land before it can be entitled to an answer. But we will, notwithstanding, proceed to answer them, and if the Comptroller's judgment is right, this honorable court will not hesitate to pronounce him *not guilty*.

Here Mr. *Tilghman* shewed that the opinion of Mr. *Nicholson* was invariable as to the New-Loan certificates being a claim against the commonwealth, and that several other officers were of the same opinion—His opinion on opening the first loan when he had no interest—when this subject was before the Legislature and never doubted until after the passing of the Act of the 10th of April, 1792—and for this purpose he cited the following letters requiring and giving information on the subject of New-Loans.

“SIR, Philadelphia, Sept. 30, 1790.

“AS I am ordered to receive on loan, certificates of the debt of the State—I shall be much obliged to you to give me a description of the several sorts of those certificates and such checks as will enable me to do that business with security to the U. S.

I am, &c.

THOMAS SMITH,
Commissioner of Loans.”

JOHN NICHOLSON, Esq.
Comptroller.

“Comptroller-General's office, Sept. 30, 1790.

“SIR,

“I RECEIVED your favour of this date and until I can give you a complete check, have enclosed herewith a blank form of a *depreciation certificate*, and one of *Funded Debt* the only two kinds receivable by you under

under the funding law of the U. S. granted by this state, as it is not presumable the *New-Loans* will be offered subjected to the restrictions in that law prescribed.

“As the state certificates are only to be deposited with you for loan, not actually loaned till a certain period have elapsed, you will be able to check those left with you more particularly hereafter.

I am, &c.

JOHN NICHOLSON.”

THOMAS SMITH, Esq.

Commissioner of Loans *Pennsylvania*.

Mr. *Tilghman* then explained the “*restrictions*” alluded to above by examples of short and long interest.

(C I R C U L A R.)

“*Treasury Department,*

“SIR,

June 6, 1791.

“IN consequence of an enquiry made of me, I think necessary to inform you that I consider the holders of certificates received from the government of any state, in lieu of certificates of the Federal debt, as having a right to *subscribe* those state-certificates to the loan of the assumed debt, and I consider the state as having a right to subscribe the Continental certificates which they have obtained by the exchange, to the loan proposed by the Act of the 4th August, 1790; but *no interest* is to be paid on the assumed debt of the state, either to the state or to individuals, until you shall be informed, that I am satisfied, that all the certificates so issued by the state have been re-exchanged or redeemed, or that all those, which shall not be re-exchanged or redeemed, have been surrendered to the U. S.

“To distinguish in a clear and striking manner this description of New-Loan certificates from all others, I have determined to have a hole, of about one fifth of an inch, cut through a part near the center, being at the end of the blank left for the creditor’s name immediately

mediately before the word "is" and directly over the letter "t" in the word "amount."

"When the stock represented in these certificates shall be transferred from and to the Loan-offices or the Treasury, the transfer certificates must have this central hole cut or punched through them in like manner.

"In order to full information, on this subject, I request you to transmit to me a copy or sufficient extracts from any laws passed by the Legislature of the state in which you reside, relative to the exchanges of Federal certificates for those of the State, and to the re-exchange of those of the State for federal certificates, in doing which you will be careful to collect whatever there may be. You will also communicate such observations as may appear necessary for the perfect understanding of the course, which the business has taken. I am, &c.

ALEXANDER HAMILTON."

TO THOMAS SMITH,
Commissioner of Loans.

Mr. *Tilghman* said, that from this letter it is extremely probable that the law of 1789 was before the Secretary when he wrote that letter, altho' he does not at present recollect it.

Mr. *Tilghman* then read the following—

"Treasury Department, June 8, 1791.

"SIR,

"YOU are right in considering yourself not authorised by law to accept on the loan of the assumed debt certificates of the state of *Pennsylvania*, dated on or after the first day of January 1790. It is however my wish that you minute in a book to be kept for that purpose the amount of such certificates offered by any person, together with the name of the person offering them.

"It will not be proper that you commit the examination and checking of the certificates of the assumed debt to any person who does not actually belong to your

M m

office,

office. It cannot be deemed a legal execution of your duty to rely upon any person not duly authorised. You will receive these certificates and give on the delivery of them to you, and before comparison with the checks, a descriptive receipt for them, which will amount to no more than an acknowledgment, that such certificates are placed in your hands with a view to the loan. The subscribers will be sensible that the receipt cannot be deemed final, because the subscriptions may exceed the assumption, and the certificates may prove counterfeit or forged. Having received them in the manner above mentioned, you will commit to some person competent to so nice and important a business, the comparison of the certificates with the registers and checks in the offices of the state, to which no doubt the easiest access will be given. Should however any unexpected impediment occur, you will make it known to me.

“ I do not perceive any objection to your striking a mark in the form you have exhibited ($\neq$) upon all the certificates deposited with you towards the loan of the assumed debt, which however should be done in such manner as not to obliterate the printed or manuscript words. You will be careful to select a proper place for the mark, which as far as possible should be uniformly made, that the eye may instantly perceive it.

“ I do not consider you as justifiable in refusing the certificates of the state of *Pennsylvania* (which are in all other respects assumable) because they have been received of the state in lieu of Continental certificates. It will not however be improper to use your endeavours to persuade the holders to exchange them, but you cannot, if they persist to offer, refuse to receive them.

“ You will perceive on re-examination that you have misconceived the instruction contained in my letter of the 9th ult. in regard to Loan-office certificates issued prior to March 1778. It applied to those only pointed out in the 10th section, that is to the *non-subscribed*, and not to those that should be loaned. You will discontinue

tinue the practice of making such endorsements on those *loaned*, and you will, when transfers takes place of such stock as has arisen from loans of those certificates take care not to make a similar endorsement on the new certificate to be given. I do not think any person making a loan has a right to do it in any other manner than that which is deemed to be perfectly conformable with the law. In regard to such *non-subscriber's* certificates as have not that endorsement on them, I have no objection to your making it if desired, but great care must be taken to be correct.

I am, &c.

ALEXANDER HAMILTON."

THOMAS SMITH, Esq. Commissioner
of Loans *Pennsylvania*.

Mr. *Tilghman* read part of the 17th and the whole of the 18th section of the Act of Congress of 4th August 1790, to introduce the correspondence with our government. Under that law it was the duty of the Secretary of the Treasury to provide that interest should not be paid twice on the same debt, he then read the following letters—

(C I R C U L A R.)

"*Treasury office*, June 27th, 1791.

"S I R,

"THE Legislature of the U. S. have directed, in the 18th section of the Act, making provision for the public debt, that the payment of interest should be suspended, in respect to the debt of any State, which may have issued its own certificates for those of the U. S. "until it shall appear to the satisfaction of the Secretary of the Treasury, that certificates issued for that purpose by such state, have been re-exchanged, or redeemed, or until those, which shall not have been re-exchanged or redeemed, shall be surrendered to the U. S." I find it necessary therefore to request your attention to the subject. If the State of *Pennsylvania* has issued any such certificates as are contemplated by
operations

the above recited section; it will give certainty to the operations of the Treasury, and may prevent delays, inconvenient to the public creditors. If you will direct the proper officers to cause the state of the fact, as it regards *Pennsylvania* to be made to appear to me. Should this general suggestion be less explicit than your desire, I shall, on being notified that it is your wish, point out more particularly the documents that would appear to satisfy the law.

I have the honor, &c.

ALEXANDER HAMILTON."

His excellency the Governor
of *Pennsylvania*.

" *Secretary's Office,*

Philadelphia, July 1st, 1791.

" S I R,

" IN obedience to instructions that I have received from the Governor, I transmit to you a copy of a letter from the Secretary of the Treasury, which affects the business of the New-Loan certificates issued in lieu of Continental certificates, and the state of the re-exchange directed to be made by the late Act of Assembly.

" You will be pleased with all convenient dispatch to make a report upon this subject to the Governor, accompanied with such statements as you shall deem necessary to satisfy the enquiry of the Secretary of the Treasury and the object of the law to which he refers.

I am, &c.

A. J. DALLAS."

John Nicholson Esq. Comptroller-
General of *Pennsylvania*.

Letter [Page 102-3] then read, and

Letter [Page 220] Mr. *Dallas* to Mr. *Nicholson*.

Also letter [Page 220-1-2.] Mr. *Tilghman* descanted very largely on this last letter, as it required particular attention, being written before the loan opened the second time—

" *Secretary's*

" Secretary's Office,

Philad. 27th Dec. 1791.

" SIR,

" THE Governor has written to the Secretary of the Treasury of the U. S. upon the subject of his letter of the 21st inst. which was communicated to you; and, having enclosed that part of your report, which states the amount of the New-Loan certificates issued, and redeemed, and the probable balance of the unexchanged certificates, he mentions, that he has given you instructions to confer with the Secretary of the Treasury in hopes that the difficulty suggested may be removed, without claiming the interposition of the Legislature. I am directed, therefore, to request your attention to the subject, and that you will communicate to the Governor, the result of the proposed conference.

I am, &c.

A. J. DALLAS."

To John Nicholson, Esq. Comptroller-General of Pennsylvania.

Here he observed no idea had been suggested all this time from the Governor to the Comptroller that the New-Loans were not subscribable to the loan of the United States.

" Comptroller-General's Office,

" SIR,

Decem. 29th, 1791.

" I have received instructions from his excellency the Governor to confer with you on the subject contained in your letter to him of the 21st instant. If the difficulty suggested should arise in a doubt, whether part of the assumed debt of Pennsylvania by the U. States might not consist of certificates given for a like sum of others of the U. States not exchanged and to be surrendered, it will be easily proven, that it does not; at any rate, I could propose a conference with you on the business at any time you may appoint, provided you approve thereof. I am, Sir, &c.

JOHN NICHOLSON."

ALEXANDER HAMILTON, Esq.

S. T. U. S.

" Comptroller-

“ *Comptroller-General’s Office,*

“ S I R,

January 18th, 1792.

“ Inclosed is one certificate of each kind granted by the state of *Pennsylvania*; that numbered 13768, £. 400 *J. Chew Thomas*, is the only kind granted for the debt of the U. States, and on which the question arises, whether any thereof have been subscribed to the funding system of the United States. The other two kinds, No. 1687 for depreciation of the army, and 2506 for all other debts due by the State, you will find include all that have been subscribed with the Loan-Officer.

“ I also send you vol. 3 of the laws of *Pennsylvania*, where you will find at page 17 marked down, the law under which the certificates, were granted mentioned first above.

“ I will send for the certificates and book when you shall have done with them. I am, &c.

JOHN NICHOLSON.”

The Hon. ALEX. HAMILTON,

Sec. of the Treasury U. S.

In consequence of these letters a conference took place. Letter (page 223-4) then read—

“ *Treasury Department,*

“ S I R,

Comptroller’s Office, Feb. 2, 1792.

“ YOU are requested to inform me as soon as may be, whether any certificates of the description of which the inclosed is a copy, have been subscribed to the loan payable in state certificates—and, if any, what is the estimated amount.

I am, &c.

OLIVER WOLCOTT.”

THOMAS SMITH, Esq.

Commissioner, &c.

Here follows the form of a blank certificate—

[No

[No.] B. £.
 (Pennsyl. Arms.) The Commonwealth of *Pennsylvania*, hath received on loan, from the sum of

to be paid to the said
 or bearer, on or before the first day of March, in the
 year of our Lord one thousand seven hundred and
 ninety-six, with interest from the day of

17 at the rate of six per centum per annum, to be paid half yearly at the State-Treasury; according to the directions of an Act of the General Assembly, passed on the first day of March 1786.

Comp.G.office, } Counter signed, }
 178 } John Nicholson. } D. Rittenhouse } Treasur.

Here Mr. *Tilghman* observed that Mr. *Nicholson* was still of the same opinion, and that before the time of passing the Act of 10th April, 1792, he proposed a plan in opposition to that Act, in which he included New-Loans as a state debt as follow—

(A.) “A plan for modifying the present debt of *Pennsylvania*.

“WHEREAS the Commonwealth and the creditors may be reciprocally benefited by a communication of the debt in manner hereinafter provided: it is proposed.

(B.) “That beside the provision for payment of the debt by parting with the stock of the United States, the property of this State, the creditors may at their option subscribe their debts to the following loan hereby proposed.

“That the stock thereby created shall bear an interest of six per cent per annum, commencing July 1st, 1792, payable quarter yearly, that is to say on the 2d days of January, April, July, and October in every year.

“That the certificates or evidences of the debt shall not be transferrable, but the debt may be assigned by the creditor or his attorney duly constituted at the proper

per office in the Treasury department, whereupon new certificates for the debt shall issue corresponding with the credits on the books. That the said debt shall be redeemable by the State at the rate of two per cent per annum of the principal. That the State shall have the power of redeeming the debt whenever expedient in such portion but no greater.

“ That the faith of the State be pledged for the punctual payment of the interest, and that the interest and monies receivable from the United States by *Pennsylvania* or so much thereof as may be necessary be appropriated to that purpose, provided always that the Legislature may withdraw this appropriation upon providing other adequate and sufficient funds.

“ That the following debts of the State be receivable in the said loan, deducting one fifth from the amount of the principal and interest.

1st.	The funded debt	}	£. 190,000
2d.	The depreciation debt funded and unfunded with interest		
(C.) 3d.	The Bills of credit of 1785		21,000
4th.	The Bills of credit of 1781		10,900
5th.	The Bills of credit of June 1st, 1780 and interest		9,500
6th.	The Bills of credit of March 1780 (island money) & inter.		700
7th.	The interest notes issued in 1783 - -		90
(D.) 8th.	The New-Loan certificates and arrearages of interest about say £. 20,000.		

	232,190
Deduct $\frac{1}{5}$	46,438
Leaves	185,752

“ That

“ That the Bills of credit emitted by the late Province and by the State before the year 1780 shall be received in the said loan at the rate of 100 for 1, viz.

9th. of the former 266,439

(E.) 10th. Of resolve and commonwealth mo. 220,000

486,439 equal to 4864 7 6

(F.) 11th. That the purpart certificates given by the state on the subscribed debt of the U. States shall be received in the said loan at 6/8 per pound £. 54,617:9:3 at that is - -

18,205 16 4

(G.) 12th. That the purparts given on the *Pennsylvania* 3 p. cent. stock (assumed) shall be received therein at 9/ per pound 81,926l. 3s. 10d. is at that rate equal to

36,866 15 9

Amount -

245,688 19 7

1. Annual interest of the amount £. 14,741:6:8 $\frac{1}{2}$, a year in 1792 is -

7,370 13 4

To be taken out of £. 14,738:2:1 interest of 6 & 3 per cent. stock, and out of £. 20,984:8:5 receivable on the assumption Act

35,712 10 6

Annual Revenues.

Balance remaining of the above

28,341 17 2

2. Excise, licences, Secretary's fees, Land-office fees, tax on writs and fines - -

7,387 9 6

3. Taxes, imposts and other debts

42,982 0 0

4. For lands, say - -

4,500

83,211 6 8

N D

Annual

Annual Expenses.

1st. Support of govern-	-	31,000		
2d. Contingent fund		2,500		
3d. Roads	-	5,000		
4th. Pensions and militia				
expences		3,829	1	3
5th. $\frac{1}{2}$ year's interest on				
the present debt till				
July 1792		7,335	9	4
6th. Frontier defence for				
1792	-	4,500		
Balance of revenue on hand			54,164	10
			29,046	16

£. 83,211 6 8

“ The above balance after deducting some necessary improvements for the rivers and hospital and some grants for public purposes to be provided for in the year, may remain as a fund for payment of any such creditors as may prefer redemption to the commutation of their debt, and to supercede the sales of stock so far as that may amount to.

“ By adopting this plan, the State will always be adequate to every exigency and expence, and have a handsome fund left for useful improvements without laying any tax or burthen on the people, or without counting more on the product of the Land-office than by the present plan of improvement it will be likely to yield for some years to come:

Respectfully submitted,

JOHN NICHOLSON.

March 15th, 1792.

References and observations.

(A.) "It is not proposed that this plan should oppose the provision for redemption of the debt, it may be added thereto, and when payment is held out with one hand, the commutation proposed with the other cannot be complained of whatever be the terms.

“B.

(B.) "To pay the debts required, would take upwards of £.230,000, which sum must all be in the Treasury before the State can with safety declare payment, so great a sum to be brought in without returning into circulation would in a degree incapacitate the dealers in the funds from purchasing our stock, we see now the effect a few days discontinuance of discounts at bank hath on stock. The Act would limit a time in which the money must be in the Treasury, the sales of the stock must take place within that period, to raise the money the creating such necessity to sell, and the knowledge that so great a quantity would be in the market, would reduce the price of the 3 per cent. stock, to be sold, and the more so, as the time approached nearer an end, and all this while the monies from the first sales would be unproductive, altho' not so the property sold to raise it. But without allowing for these things let us suppose the present price 12/9 to be obtained throughout the sales, the State would then be divested of a specie capital of above £.400,000, of which a part might always be held as a mean of discharging the reduced debt, which would exist on the plan proposed, and leave a balance of near £.200,000 clear profit in favor of this plan, and this sum would be greater by all the reduction of the price from the causes aforesaid which would be very considerable. But this is not all, for after divesting the State of all her 3 per cent. stock it would take the most if not all the 6 per cent. or deferred stock, to be parted with to make up the deficiency, and the State deprived of this annual income would be obliged to resort to direct taxation for further expences or improvements which the interest of this stock is now appropriated to.

"All writers on the subject of finance agree that a public debt is accompanied with some advantages by combining the interest of individuals with the success, stability and honor of government, and altho' these and other advantages should be outweighed by the disadvantages, so that a public debt ought not to be termed
a public

a public blessing, yet in the present case we should possess all the political as well as pecuniary advantages without any of the objections, for as it is shewn above the State possesses the specie capital always to meet the debt, altho' they are at liberty to redeem in certain portions, yet they are not bound to pay, and may continue without doing it until Congress pay the capital of their 3 per cent. stock.

"The policy of this measure must strike forcibly every one who is desirous of preventing the annihilation of the State governments and preserving the balance of power between them and the General government. The limits of which are but imperfectly traced out in some cases by the federal Constitution, and if the doctrine of implication gains ground, may prove no barrier to the encroachments of power. We see what exertions the policy of the general government directs to, on this head respecting the assumption of the State debts.

(C.) "By the present laws or proposed arrangements of the committee on Ways and Means there is no provision for exchanging these bills at the Treasury for specie or for redeeming them, except to such as have public payments to make, which may be done therein, altho' they are all engaged to be redeemed this year, this plan will prevent the collection of the revenue from being clogged in future with these bills.

(D.) "It is proposed that these certificates should be received with the arrears of their interest on the same term as the other preceding debts of the state. The holders nevertheless to be continued in the privilege of exchanging them as at present. But it would seem proper that after due notice so as not to extend to the period of the limitation of the next loan by Congress, a limitation should by law be put to such power of exchanging, that thereafter the Continental certificates should be subscribed for the use of the state, and that the state having provided for the redemption of such as might remain unexchanged, unsubscribed to the loan herein proposed or unsubscribed to the assumption of
the

the state debts by the United States, should declare that interest should thenceforth cease thereon unless payment were demanded.

“No sum is extended in this case as the Continental certificates will be in possession of the state to be opposed to this debt as far as the same may be subscribed as herein proposed.

(E.) “These emissions thus provided for, may and will redeem them out of the way and may prevent difficulties hereafter. That a government may interrupt the currency, so as to take it out of circulation and redeem it by other bills we have, beside other precedents, two in *Pennsylvania* between the year 1730 and 1740. All the old bills were called in and others given for them, and at the Revolution a similar law was passed respecting all the bills emitted before that period: But how far the government may decide that after a fixed period thus to exchange them shall have elapsed, they may wholly refuse payment thereof, no such terms existing when the bills were emitted, is a question which may better be got rid of in this way, which will afford the holders more than the last current value of the bills. This is clear that the bills emitted by the old government should have no better fate than those emitted under the present, nor should any preference arising out of distrust of the late revolution, and the present government, operate any advantage to this class, while those should suffer who in confidence, and compliance with the laws of the state, exchanged their bills, the former for the latter.

(F.) “These certificates cannot be redeemed, consistently with the faith and honor of the state, by calculating the accumulated interest half yearly, for an annuity of nine years, because they and the Act under which they were issued, contain an obligation to pay the interest until it shall be done by the United States. If therefore no payment should be made of interest in 1801, or any future period, on deferred debt by the United States, the obligation of the state still compel us to pay.

(G.)

(G.) "These certificates granted for the additional interest of 3 per cent. bind the state in such a way as that the government can never be released; therefore consistent with good faith, without a commutation accepted at the choice of the creditor, unless the United States should raise the interest to 6 per cent. which will not be done; or unless the United States, who may when they please, should pay off the capital. The latter is not shortly to be expected, unless on the application of *Pennsylvania*, who could make it their advantage to redeem the *Pennsylvania* assumed debt. It would be well therefore to hold out this proposition for such as should not within a limited time subscribe their 3 per cent. purparts, according to the terms herein proposed."

Mr. *Tilghman* observed that Mr. *Nicholson* proposed this plan to several members of the Legislature, containing his declaration and opinion as to the subscribability of New-Loan certificates to the loan of the U. S. (See last line page 284, and first line page 285.)

He read the following letter—

"DEAR SIR,

21st March, 1792.

"I FIND from consulting Mr. *Gallatin*, and several other gentlemen, that your plan would not, at this time, meet with any chance of success, though its principles appear to me to be good. The Governor has considered the subject, and will probably determine to-morrow, how far it would be proper to transmit the plan to the Legislature. I am, &c.

A. J. DALLAS."

JOHN NICHOLSON, Esq.

Wm. Bingham, Esq. sworn.

Question by Mr. *Tilghman*. Do you recollect any thing of a plan of finance enclosed to you in 1792 by the Comptroller-General?

Ans. I do, it was enclosed to me in a letter by the defendant,

defendant, and proposed as a substitute for the one brought in by the committee on ways and means.

I do not recollect particularly the plan, being more engaged in the one before the House, but from some parts of the one now produced I think it is the same.

Mr. *Tilghman* observed that

While the Act of the 10th of April 1792 was under the consideration of the Legislature, Mr. *N.* thought it his duty to give it every decent opposition by mentioning to the members and by trying to carry his own plan into execution, and particularly as it would by the 6th section make the State liable to redeem whatever Congress would chuse to assume.

Richard Thomas, Esq. sworn.

My memory is imperfect, I remember the defendant had some conversation with me whilst the bill was depending before the Legislature, I remember generally that he said, the bill as it stood would admit of constructions that would open a door for speculation, I cannot recollect perfectly, but I fully understood from him that he was opposed to the bill for that reason, I do not recollect the very words, but from that principle, a speculation disadvantageous to the State.

Alexander Hamilton, Esq. Sec. Treasury U. S. sworn.

Ques. by the defendant's Counsel. Do you recollect what passed at any conference between yourself and the Comptroller-General, and what difficulty occurred to you respecting the subscribability of New-Loans?

I recollect there were several conferences between the Comptroller-General and myself, am unable to distinguish with precision the one alluded to, I recollect one interview in particular in which this point was discussed, that is, whether interest on the state debt should be suspended. I really charge my memory with nothing more than, that Mr. *Nicholson* urged arguments to induce me to believe that the spirit of that part of the Act of Congress was only to prevent the payment of double

double interest, and that a surrender was neither practicable nor equitable, (*see page 220-1-2-3-4*); as none of these had been subscribed, this inconvenience could not arise, the intention of the Act of Congress was fulfilled, I was convinced the reasoning was just, there being no basis on which the U. S. could demand a surrender.

If the New-Loans in my view of them *at that time* had not been subscribable, this difficulty could not have arisen. The Comptroller always appeared to me to be of the opinion that they were subscribable—none were subscribed in the former loan. The enquiry whether any had been subscribed to the loan was directed to the commissioner of loans, the information must ultimately have come from him—Mr. *Wolcott* might have been the intermediate agent, I can't remember.

Ques. Have any been subscribed to the second loan?

Ans. I can't without previous preparation answer that enquiry, I could have easily ascertained it, I do not recollect, my conjecture is that there were none, there were some certificates of that description which were not finally admitted. I recollect there were some discussions.

Ques. Are they entirely rejected or are they depending?

Ans. They took a course somewhat peculiar, in the view of the Treasury they are virtually excluded, the time allowed for the loan being passed; after the Attorney-General's opinion on a point raised they were not admitted, this point arose after the second loan opened. The subject had not engaged my consideration, nor did it come forward in a *prominent point of view* until after the second assumption. The Attorney-General of the state of *Pennsylvania* gave his opinion that they are abolished, as debts of this state. I may have read the Act of March 1789, but I do not recollect having seen it until after the closure of the first loan. I did not see that Act during the first conferences.

On Ques. by Mr. Bradford. It did not occur to me that the Act of 1789 was passed after the adoption of the Federal Constitution, until the business was closed

at the Treasury—the Constitution was not considered by me until afterwards.

Ques. Can you furnish a copy of the opinion of the Attorney-General on that point?

Ans. Certainly. (See page 81-2.) (Retired.)

John Smilie, Esq. sworn.

Ques. by Mr. Bradford. Please to inform the Senate of your recollection of Mr. Nicholson's objection to the passing of the Act of 10th April 1792?

Ans. I believe Mr. Nicholson communicated some objections which he had against the Act, I do not perfectly recollect, he spoke to me more than once on the subject. I do not recollect seeing his plan of finance; it is probable that he shewed it to me, but I do not remember.

(Retired.)

Mr. Robert Hare, sworn.

Mr. Nicholson in the spring of 1792 communicated to me his plan of finance. Here is the original plan with Mr. Nicholson's reasons in recommendation of it, there was no more of it I believe; the transaction took place two years ago; I know of no other conversation on the subject, I was not careful, having no idea that I should be required to answer any thing about it. Whilst the finance-bill was before the House, Mr. Nicholson sent for me into the committee room, I informed Mr. Nicholson that I believed the plan would not be relished as coming from an officer, and would be the cause of some jealousy, Mr. Nicholson told me that the Governor would recommend it, I shewed it to another member, who likewise differed with Mr. Nicholson, as I did: It did not come from the Governor, so no further notice was taken of it.

Ques. Did Mr. Nicholson mention his objections to you?

Ans. Mr. Nicholson had a general condemnation of the Act in view—he communicated no further ideas to me, our conversation was very short, there was an inter-

esting debate in the House at the time, and I left him immediately. (Retired.)

The following is a copy of the letter handed by Mr. Hare with the plan recommended by Mr. Nicholson, (page 279, &c.)

“DEAR SIR,

March 22d, 1792.

“ENCLOSED is a copy of a plan on the subject of the public debt, which I wish much to see connected with the offer of redemption which on pecuniary and political principles promise much in favor of *Pennsylvania*. The Governor I believe will submit it to the Legislature. If it meets your approbation, I wish you would support it in the House. It will save *Pennsylvania* from that necessity she will otherwise be under of recurring to taxation for support of government and incidental expences without any thing for improvements. By this a surplus will exist this year of £.29,000. So that Monongahelia inland navigation may be encouraged without injuring other essential objects, that there will be money for the Hospital, &c. The annual surplus of the revenue after improvements, will constitute a handsome sinking fund. With esteem, &c.

JOHN NICHOLSON.”

ROBERT HARE, Esq.

William Montgomery, Esq. sworn.

I remember being one day in Mr. *Nicholson's* office, whilst the law of the 10th of April 1792 was pending before the House, he expressed his disapprobation of the law, as it would expose the state to inconveniences, and would prove of advantage to individuals—not particular what passages or section he alluded to—he gave me to understand that some individuals would take the advantage to the loss of the state. I think he mentioned his own plan a better one.

Abraham Smith, Esq. sworn.

Whilst the Act of 10th April 1792, was before the Legislature, Mr. *Nicholson* called at my lodgings, he told

told me he did not like the law, and his arguments convinced me, this turned my attention to the plan recommended by him, on examination I saw some parts of it which I did not like, and therefore thought his plan wrong. The particular reasons not recollected—one objection was the sale of so much stock would overcrowd the market, and, sold to a disadvantage would injure the state. (Retired.)

Mr. *Tilghman* remarked that as Mr. *Hamilton's* letter to Mr. *Dallas* had been brought forward, the two letters (see page 74 to 79, and one letter, page 218 to 220) should also be read, which he did. In the latter the Secretary mentions the virtual rejection of them, but did not recollect the Federal Constitution.

Mr. *Donnaldson* was called—

Shortly after the House arose after the passing of the Act of the 10th April 1792 I was in the Comptroller's office on business—Mr. *Gallatin* was present, I observed that the 6th section was very loose and would embrace unfunded depreciation debt. In which sentiment there was an agreement of opinion, and I think Mr. *Nicholson* observed if Congress would assume the old bills of credit of the state, the Act would embrace them. Mr. *Gallatin* observed that the section was more general than he at first thought, or intended it, and that it would embrace unfunded depreciation, don't recollect that any conversation took place, nor difference of opinion about that law until after the subscription of New-Loans, when we had a conference, and we agreed in opinion that they were subscribable and assumable. No other conversation about them until the conference above-mentioned. I recollect the letter of the 13th of April 1792, respecting the sale of stock. But as to that said to be lost, in my letter book there is no reference to such a letter, I have been much perplexed about it, strongly impressed that there had been such a letter, but cannot account for it, and doubt whether there was any as it is not on my books. When the committee on Ways and Means

Means had the subject before them last year, they required the estimate—I turned to my letter book, but could not find it.

The defendant's accounts were passed through my office in the usual form. His abstracts were made in his office, this difference, that assignments were made on them in his office, then they were sent down to mine.

Ques. Is there any thing upon these abstracts from whence, in the common course of business, they could be distinguished that New-Loans were included?

Ans. Yes; dates of interest on New-Loans commenced at mixt and different dates. The date of the commencement of interest on funded and depreciation debt on fixt and particular dates. Funded debt first of January, first of July, depreciation 10th April, 10th of October. No other certificates but New-Loans are depreciated on the principal.

Ques. Do you recollect any other distinguishing mark?

Ans. None that occurs to me at present, the names of the issuers were the same in the one as in the other. Dates of interest promiscuous in New-Loans, in the other certificates the dates of interest fixt and determined. The fact was I never considered it of any consequence what the abstracts were made up of, so that they were received at the Loan-office.

I encouraged subscribing under the idea that *Pennsylvania* would be a creditor state, the documents were presented to the Comptroller, if they passed him, that is whether they were assumable; they then came to me a second time, the principal examination was confined to the calculations of principal and interest, the business was carried thro' in the usual time, no hurry or solicitude on the part of the Comptroller to carry his business thro', or get his abstracts passed. If there had been I should have turned the other business by. One day's business was generally finished the same day. In the 2d conference with Mr. *Nicholson*, I was perfectly of opinion with him and I was confirmed in my opinion until doubts were raised by Mr. *Dallas*, who procured the
Attorney-

Attorney-General's opinion. The construction of the law was the subject of conversation—I introduced it.

Ques. by Mr. Wilcocks. Had you no opportunity of seeing the certificates? [*Not 10 persons in the gallery.*]

Ans. I have frequently, where certificates were brought to be redeemed, and returned those subscribable to the parties, the certificates subscribed were never brought to my office.

Ques. by Mr. Ingersoll. You say that Mr. Nicholson mentioned bills of credit?

Ans. The first observation was made by me, that it would extend to unfunded depreciation; by Mr. Nicholson, that it was a sweeping clause, and would extend to every thing, that is if the United States, would take in the bills of credit of this State, the section would embrace them or whatever Congress would assume.

Ques. by Mr. Ingersoll. What about the documents in your office relative to forfeited estates?

Ans. The most of them were issued before my appointment.

Ques. by Mr. Tilghman. At the time of conversation with Mr. Gallatin, the Comptroller, and yourself, was there an acquiescence that whatever was assumable and subscribable was redeemable?

Ans. We deemed that clause would extend to every thing Congress would redeem, the whole unfunded depreciation, nay every species of debt. But bills of credit and unfunded depreciation were particularly mentioned.

Ques. by Mr. Gibson. Were the unfunded depreciation redeemed under the 2d or 6th section?

Ans. Under the 6th section.

Adjourned till 10 o'clock to-morrow.

In the minutes of the House of Representatives the following entry is recorded:

“ In conformity to the resolutions of the 25th February last, the House resolved itself into a committee of the whole, in order to attend the trial of *John Nicholson*, Comptroller-General of this commonwealth, now depending

pending before the Senate, on the articles of impeachment exhibited against him by the House of Representatives.

“The Speaker quitted the chair and Mr. *Wynkoop* was placed therein.

“The committee then proceeded to the Senate-chamber for the purpose aforesaid.

“And after some time,

“The committee of the whole returned to their own chamber.

“The Chairman left the chair and the Speaker resumed it.

“The Chairman then reported that the committee of the whole had attended the trial of the said *John Nicholson*.

“The committee appointed to manage the trial of the articles of impeachment against *John Nicholson*, Comptroller-General, reported that they had made further progress.”

Seventh day of the trial.

THURSDAY, MARCH 6, 1794.

SENATE met pursuant to adjournment.

(Messrs. *Wilcocks* and *C. Evans* only attending, not 10 Spectators in the gallery.)

Mr. *Tilghman*

Having examined a number of witnesses and read many documents to shew that our construction of the Act is consonant to law, and that the defendant's opinion and judgment was the legal one, I will only examine one or two more to the same point.—In order to shew this more fully I will quote the Governor's words in the minutes of the Assembly, 10th December, 1791, page 12, where his words allude to the payment of arrears due not on New-Loan certificates but “on the New-Loan debt.” Where they are quoted, they are styled New-Loan-

Loan certificates. The reason why the New-Loans are not stated as a debt to be paid, is because the commonwealth thought she had a fund in her hands equivalent to answer them at any time, the State and her officers conceived they had a fund, commensurate to their redemption, either when the party should come to exchange, or when future provision should be made by the Legislature. The word "*redeemed*," minutes, page 389, 1791, so much relied on, alluded only to the Land-Office. Page 421, the Register-General heads the title "New-Loan Debt." In Mr. *Donnaldson's* report 15th August, 1791, No. 25, the expression is "Arrears of interest on New-Loan Debt:" with many other similar expressions.

Mr. *Albert Gallatin*, sworn.

Ques. We wish to know if you had any conversation with Mr. *Nicholson* about the Act of the 10th of April 1792—the purport, time, &c.?

Ans. I have understood that those were the points to which I should give evidence, and I have just sent for the minutes of 1791 to whet my recollection as my memory is imperfect at this time. [*Gets the books.*] The only difficulty I have is, the date of the conversation, I do not recollect that very well, whether before the bill was reported, or while the report of the committee on ways and means was before the House—the import of the conversation was that Mr. *Nicholson* had an objection, he gave me his plan, and requested me to give my opinion, the plan before the House was to redeem the debts, his plan did not propose a redemption but commutation with an irredeemable quality. I thought the redeeming plan better and therefore did not approve and I returned him his plan. Another circumstance, After I returned the plan to Mr. *Nicholson*, the Secretary of the commonwealth shewed me that plan or a copy of it, and requested me to look at it, and that Mr. *Nicholson* requested the Governor to recommend it to the Legislature, the bill agreeably to the report of the committee of Ways and Means was
then

then under the consideration of the Legislature, I told Mr. *Dallas* that I had seen it before, and disapproved of it, and told him the Governor had better examine the plan, and not send it except he approved of it.

After the bill passed; and the House adjourned. I was in the Comptroller's office; the conversation turned on the possibility of carrying the Act into execution, several difficulties arose, and objections were started, on account of the price of stock in the market being lower than the price limited in the Act, and propositions were made to get over the difficulty. Also whether a part of the 3 per cent. stock should be sold or the whole at once; I was afraid the whole plan would be defeated. These objections were raised by the officers. The defendant suggested that by the law unfunded depreciation certificates were redeemable, altho' the Legislature perhaps might not intend it: That it appeared to him unfunded depreciation was redeemable, altho' the report excluded them. Upon that Mr. *Nicholson* shewed me the 6th section, I assented to what he said, and said that I thought the unfunded certificates were included in that section. I added that I had drawn the bill myself, and had made the 6th section a *proviso* to the second; expressly providing for the redemption of certain certificates therein defined, which would put the thing beyond dispute, because the second section defined the thing to be redeemed, that the *proviso* was made a distinct section out of the House; as some kind of proviso, always considered in the House, but assented at the same time that the construction would extend to unfunded depreciation. I had no time to form an opinion, it was of the moment, on the first impression. I also added that it was very immaterial to the state to redeem this way, or by the Land-Office, the price being at that time nearly the same as cash.* Mr. *Donnaldson* was present the whole or most of the time. I don't remember

* The defendant refers to the price-current of the brokers to prove that the price of New-Loans in the market was then as high as unfunded Depreciation certificates.

member to hear any other opinion from Mr. Donaldson except at that time. At the next meeting of the Legislature on my return to the city, I was astonished to hear that New-Loans were redeemed—I had a small New-Loan certificate from Mr. Douglass, which I kept pretty late, don't know whether before or after the law passed, I gave it to the Comptroller to exchange it, he said he was hurried, he would get it exchanged and subscribed and give me the parts; he gave me a receipt for the New-Loan, I do not know the time, it was about May, it was not completed at the end of April, I left town with that receipt in my pocket, which I gave to Mr. Douglass, I know I had no idea of their being of any other use than for the purpose of exchange, if I had thought they were redeemable, I would enquire and do the best for him who employed me.

Ques. Did you not give an opinion that whatever were subscribable, were redeemable?

Ans. Yes; that was the ground of my opinion that the unfunded depreciation were redeemable.

Ques. by Mr. Lewis. Of what date was that conversation?

Ans. A day or two after the advertisement was published, I staid in town ten days after the House had adjourned, the advertisement was put into the public papers before I left town, the sale of stock was the 16th April—the sum to be sold was 986,000 dollars. I think the advertisement was the ground of our conversation.

Ques. by Mr. Ingersoll. Did you concur in opinion with the Comptroller-General that if Congress should assume the state debts that bills of credit would be redeemable?

Ans. That was not mentioned, if it was I did not assent. The reason why I recollect it, was that during the following Legislature a letter was written by the Comptroller in which such an idea was introduced. This made me look into the law, to see whether there were any grounds for it, saw there a distinction made between *certificates* and *bills of credit*, the sixth section

includes only *certificates*. The Comptroller's letter is in the fall of 92 or spring of 1793.

Ques. by Mr. Ingersoll. Do you recollect how the Register-General expressed himself at that meeting?

Ans. I don't remember his giving any opinion, I think he acquiesced as far as the unfunded depreciation certificates.

Ques. by ditto. In the course of this conversation was there any other object than the unfunded depreciation certificates?

Ans. None that I recollect.

The Register-General expressed his opinion very fully next year before the committee of ways and means, but before that time I do not remember.

Ques. by Mr. Ingersoll. Did he mention his opinion at the time New-Loans were redeemed?

Ans. Yes. (Report of committee on ways and means, page 337) a part of the report was grounded on the testimony of the Register-General respecting them—(Here he read "*deluded into error, discriminate,*" &c.) the whole of that was grounded on the declaration of the Register-General, he declared he was not consulted and the abstracts on the face did not discriminate, there was a change took place between this and the time when the articles of impeachment were before the House, he said the abstracts sufficiently discriminated, and that the New-Loans could be easily distinguished. Another article was then made to conform to this idea. (Here Mr. Gallatin pointed out what, he called, an error in the minutes, page 361 and 374.) He also said he always conceived if they were assumable, they were redeemable with this single difficulty, whether there was power lodged with the Comptroller to give up the Continental certificates. The Comptroller had always certified the subscribability without his knowledge. He was also asked how he did not discover them by other marks—his answer was, that his part was the calculation of interest, and did not attend to any other. Last summer when the committee of investigation examined the certificate of John
Thompson,

Thompson, for £. 231 : 7 : 7, found that interest was calculated on £. 300—that certificate was reduced by the scale of depreciation, I asked *Donnaldson*, here was one you could not mistake, you said you calculated the interest from this calculation, and date of interest, you must be satisfied that this was a New-Loan?—He seemed much confused and said a clerk had done it, and appeared as if he knew nothing of it. He also said he passed one small one after he knew it.

Ques. by Mr. Lewis. Were the articles found without the witnesses being sworn?

Ans. Mr. *McGlenachan*, Mr. *McConnell*, and Mr. *Oldden* were sworn—*Donnaldson* was a public officer, and was not sworn, no other witness whatever was attached to this third article but Mr. *Donnaldson*.

(*He retired.*)

Mr. *Joseph Boggs*, sworn.

Ques. Did you subscribe any New-Loans to the state loan of the United States?

Ans. Yes; about the latter end of June or beginning of July 1792, I was asked for New-Loan certificates, I asked what they would give me, they said 6 or 7 pence more than for final settlements, I had none then, but from this circumstance I was induced to try to find out what they wanted to do with them. After reading the Act of Congress of 4th of August 1790, assuming state debts, and the Act of this state which was passed in April 1792, it was my opinion they were assumable, and in consequence I purchased and subscribed part on my own account and part on account of another person, none on Mr. *Nicholson's* account, I can't tell who came to me, I made an abstract, carried it to Mr. *Nicholson*, he certified them *genuine* and *assumable*, they were not redeemed as the business was stopped.

Ques. by Mr. Ingersoll. What's the reason of 6 or 7 pence higher than the other certificates? Were they equal before?

Ans. No difference. I did not know that Mr. *Nicholson* was purchasing at that time—was informed by
the

the Register-General that a stop was put to them in the Secretary's office.

Mr. *Tilghman* proceeded—

It appears also that Judge *Addison* was making a second subscription, it is presumable that he knew the law. It is mentioned that Mr. *Nicholson* did not certify in his own case. This is a strong circumstance: If he was conscious that the certification would be improper, he would have omitted it: before the second loan it was not customary. A counterfeit certificate of *Lawman*, of *Lancaster*, gave rise to this certification.

Mr. *Richard Smith* (son to the late Commissioner of Loans) brought the subscription book to the state loan of the U. S. and being sworn, declared as follows.

George Lawman of *Lancaster* subscribed in the name of *Gungachu*, a certificate No. 234 which proved to be counterfeit. I believe the cause of certifying was to prevent inconvenience to the parties, when they came without such certification they were generally sent to Mr. *Nicholson's* office, I did not know when the practice commenced—it made no odds to us whether it was done or not, as the receipt which my father gave was *subject to examination*, when the first and second loans closed we took the certificates to the Comptroller's office and examined for ourselves. (Retired.)

Mr. *Tilghman*.

It hath been objected that the Governor called for a statement which does not at this time appear, altho' its contents are pretty satisfactorily acknowledged, a bare attention to the time when this transaction took place will shew the assertion is unfounded—It is true the state committed herself so far as to redeem what would be assumed, but as the Act of Congress was not then passed, it was unknown what Congress would assume. The Comptroller never thought New-Loans came under the second section, the sale of stock related only to the second section, he could not divine more than others, it by no means follows from this that New-Loans were not redeemable—strange that in the fourth article they endeavor

vour to prove the premises from the conclusion. It was lawful for him to purchase as well as others, the moment a doubt was suggested he stopped and paid Judge Addison July 23, 1792, for his subscription pound for pound. If this is doubted, recourse may be had to the bank, where they'll find that Mr. Nicholson paid the full amount.

He read the following letter—

“ Secretary's office, July 23, 1792.

“ GENTLEMEN,

“ THE Governor directs me to request that you will avoid giving any sanction to an idea that the New-Loan certificates of the State are subscribable to the loan proposed by Congress, or certifying that they are so to the Continental Loan-officer, until he has received the opinion of the Attorney-General upon that subject.

I am, &c.

A. J. DALLAS.”

To the Comptroller and
Register-General.

Mr. Tilghman.—

Before I proceed to the next head, I will remark that the state ought to pay the full amount, that the New-Loans were subscribable and redeemable, and consequently the state ought to pay pound for pound, and really the complaint against the Comptroller is of an extraordinary nature—“ Mr. Nicholson acquired wealth that the state ought to have got !”—I fancy if any questions ought to be raised, it ought not to be between the commonwealth, but between the persons from whom Mr. Nicholson bought, he however bought fairly. I now come to the Acts of Assembly, and I will shew that the construction drawn by the managers, is injurious and derogatory, and I hope to shew Mr. Nicholson's construction to be consonant to good faith, honor and equity. If the law is to receive their construction, it will oppose the Federal Constitution, which is the supreme law of the land; and therefore it is utterly void.

My

My positions are, that New-Loans were subscribable to the first loan, also to the second, and likewise redeemable under the sixth section of the Act of the 10th April 1792.

(Here Mr. *Tilghman* read the 3d, 7th and 11th sections of the Act of March 1, 1786, to prove that New-Loans were as much a debt as any other.) No matter whether the commonwealth became immediately indebted or thro' the agency of others. Temporary provision is not apparent from the Act. If the commonwealth entertained temporary views they were not mutual. Mutuality and reciprocity are the essence of contracts. Whatever is reasonable with private persons in the case of contracts is so with the State.

But it hath been contended that the Act of March 27 1789, puts these certificates into an ambiguous state; let us examine the Act itself—"Whereas the duties on exports and imposts are given to Congress—*temporary* relief—it became inconvenient to pay half-yearly, &c."—this Act does not compel an exchange, it leaves it optional; perhaps the commonwealth could not pay, what then ought to be done?—we will give you an option. You are our creditor; we have contracted to pay you principal and interest; we will pay you four year's interest because we are able to do so, and we will give you back your original certificate at your option, or we will pay you when we can.

The 3d section did not contemplate that all would exchange, and it implies too much injustice and impropriety to presume they meant to absolve themselves from the payment of the remainder; "MANY," is a relative term, it does not imply a majority, it means some may, others would not.

Under the construction of the Managers the New-Loan holder is a creditor of nobody; but possibly or probably may become the creditor of the Continent. Notwithstanding the time of payment is altered, yet the State holds the value in her hands and continues no debtor. How can such a construction be put on this
Act

Act without flying in the face of the Federal Constitution—(Section 10 of the first article is cited,) Congress in the ninth section of the same article is denied the power of making *ex post facto* laws.

This is the last of all supposable cases, by this Constitution no State can pass a law impairing the obligation of contracts made between A and B, consequently a State cannot do it, when she is a contracting party.

I now refer to the Act of 7th April 1791, that the commonwealth contemplated them as a debt. (He quoted Act of 7th April, 1791, page 51 and 54.) Where the State seemed to contemplate the preventing of New-Loans from subscription. No. 235 is the first abstract which was certified—No. 234 was counterfeit as aforesaid. No certification of *genuine* and *assumable* from Mr. Nicholson before the counterfeit was discovered.

It was not the duty of the Comptroller-General to certify—no checks of office have been broken—Mr. Nicholson was under no obligation to consult the Governor—no law required a discrimination, it would be wrong to do it, no intention in the Comptroller to deceive, if a difference of opinion with the Register-General existed then it would be right, he took no pains to colour, no labour to shed confusion, the New-Loans in his abstracts might have been known from all others, if the Register or any other person would examine them, this afforded an infallible criterion, if he had been at any pains to conceal—it would be contemptible swindling—a mean point of view indeed, “till he got the money.” The subscription was in his own name, fairly and openly “to promote and procure his own emolument”—come what will of these allegations no such thoughts were in the Comptroller’s mind, he sets all such at defiance.

The 4th article of impeachment.

There is a fund, 12th appropriation, by the Act of 7th April, 1791, and applies to our case by the 6th section of the Act of 10th April 1792. Out of this fund were redeemed the unfunded depreciation warrant

No.

No. 1551 for Brigade-Inspector, and several others which he referred to. If there was no fund it was no guilt imputable to the Comptroller, as it was not his look out, but the Governor's who drew the orders. (*Here Mr. Wilcocks hinted to Mr. Tilghman, "no matter what fund, so you get the money." Mr. Tilghman replied, "I believe it to be the same with the Managers and their Counsel; but we have a legal fund tho' you have not."*) Other warrants were produced here—warrant No. 243 in favor of Mr. Rittenhouse, May 16th, 1792, no law expressly appropriating this fund.

Mr. *Dallas* was called up and said, he never knew unfunded depreciation debt to have been paid under the Act of 10th April, 1792. The unfunded depreciation debt was not in the estimate (Mr. *Trimble* was introduced with his book) and Mr. *Dallas* read from his records the forms of the certificates and warrants—the original statement did not extend to unfunded depreciation debt: The Comptroller and Register-General were called on for a statement of the debt to be redeemed and accordingly the Governor directed the sale.

Mr. *Tilghman*—Having observed that the 1st, 2d and 3d articles of impeachment are not supported, and the 4th being a consequential deduction from the preceding ones, if the former has no foundation, the latter cannot be supported, I will to-morrow endeavour to discharge my duty respecting the succeeding articles.

Adjourned until 10 o'clock to-morrow.

In the minutes of the House of Representatives the following is recorded:—

"In conformity to the resolutions of the 25th February last the House resolved itself into a committee of the whole in order to attend the trial of *John Nicholson*, Comptroller-General of this commonwealth, now depending before the Senate, on the articles of impeachment exhibited against him by the House of Representatives.

"The Speaker quitted the chair and Mr. *Wynkoop* was placed therein.

"The

“ The committee then proceeded to the Senate-chamber for the purpose aforesaid.

“ And after some time, they returned to their own chamber.

“ The Chairman then reported that the committee of the whole had attended the trial of the said *John Nicholson*.

“ The committee appointed to manage the trial of the articles of impeachment against *John Nicholson*, Comptroller-General, reported that they had made further progress.”

Eighth day of the trial.

F R I D A Y, MARCH 7, 1794.

SENATE met pursuant to adjournment.

Mr. *Tilghman*.—

Under the 12th appropriation the law admits the fund for claims and improvements. Instances can be produced: But it is immaterial whether there are instances or not, if the law is with us. (The Treasurer was sent for at this time, who answered he could not come, and if the defendant wanted the vouchers he must send a horse and cart for them.)

Under the fifth and sixth articles the Comptroller is charged with purchasing certificates of persons coming to his office for the purpose of exchanging them—I acknowledge the fact and contend it is lawful; he purchased of *Oldden*, I contend that the property of the certificates were not vested in the State of *Pennsylvania*, the business was inchoate: a good deal remained to be done, the property belonged to the party, the amount of interest was to be calculated, indents to be paid, &c. before the exchange was completed. Instances will be shewn to prove the practice of withdrawing after they had been thus rendered.

John Pearson, for whom a subpoena had been issued, was called but did not appear.

Griffith Evans, sworn.

I had been in the practice of frequently bringing New-Loans to the Comptroller-General's office to be exchanged. I was once at the Comptroller's office, I met a person from *Chester* county who had previously left a New-Loan certificate with Mr. *Nicholson* to be exchanged, he appeared to be going away, I suppose to get indents; I offered to do it for him, Mr. *Nicholson* delivered me the certificate which I afterwards exchanged, probably at some subsequent period when I was exchanging more for myself, the date I suppose in the winter of 1792.

Ques. Was it before the passing of the Act of the 10th April 1792? and inform of any circumstances respecting it.

Ans. I will relate a circumstance; previous to the passing of that Act, I came to the Comptroller-General's office, I met Mr. *Gallatin* going down, almost as soon as I came up to Mr. *Nicholson's* table, I said is it possible that they will pass that law? if passed as reported it will include New-Loans. Mr. *Nicholson* said, I have been endeavouring to convince Mr. *Gallatin* that it will do so.

We conversed on the subject and both agreed that it would not be for the interest of the State, and that it would be better if the Act did not pass. We thought it better for the State not to sell the stock. Mr. *Nicholson* said, he thought he had convinced Mr. *Gallatin*. I do not remember any thing about unfunded debt—it appeared to me so extraordinary that I thought it would not pass. We did not go into particular statements, no other inconvenience mentioned except the selling of the public stock. After the law passed I revolved in my mind whether I should go into a speculation, but from some consideration I did not.

Mr. Tilghman:

On the 16th of March 1792, the House of Representatives

ratives (by the minutes) resolved itself into a committee of the whole to take the Act of the 10th April 1792 into consideration. I will shew from the books of Mr. *Nicholson* that he spoke to Mr. *Gallatin* as the last witness had deposed—(after some debate the diary, book A, of the Comptroller was rejected as improper testimony, being the private memorandum of the defendant, as they alledged.)

Mr. *Donnaldson* was called and declared,

I was never before the House of Representatives; only before the committee of Ways and Means: never on oath. I was requested to reduce what I had to writing, and send it to them, which I did.

Mr. *Tilghman*.—It has been supposed that *Hans Hamilton* received Continental Loan-office certificates from the commonwealth of *Pennsylvania* these have been subscribed by *John Nicholson* on *Hans Hamilton's* account to the domestic debt of the United States—And the corresponding New-Loans also by the Comptroller-General on his own account to the State loan. The inference thence drawn is that the New-Loans were first exchanged and then subscribed, we are not charged with having misapplied the Continental certificates, the charge must be that the New-Loans were exchanged and then subscribed, but this by no means appears, nor was it the case, as we shall prove by the testimony of *Hans Hamilton* himself, that Mr. *Nicholson* purchased those New-Loans of him.

J. *Donnaldson* attended with his books.

The first entry of the redeemed debt made on the 2d of July 1792. The number of the abstract was presented and the entry was made of the whole. The first entry of unfunded depreciation debt was *Samuel Powel*, upon the separation of the debt the abstracts were sent to Mr. *Nicholson's* office to mark the several kinds. They were sent in August or September. After their return to my office, I entered the abstracts. The next of unfunded depreciation was No. 218, *Robert Buchannan*. The next instance was No. 256, *Jasper Yeates*. The whole amount of unfunded depreciation was 4,070 dollars and 10 cents:

It was paid out of the sale of stock. I find by my report, that my estimate to the Governor did not include them.

Mr. Tilghman :

The unfunded Depreciation were entitled under the sixth section of the Act of the 10th April 1792, and yet they contend that no fund was provided : I have now the warrants from the Treasury—(Here a number of warrants were produced to shew that similar claims were paid by the 3d and 12th appropriations out of the fund for claims and improvements.) Here I will leave the 4th article.

I shall now proceed to shew instances of New-Loan certificates being lodged with the Comptroller-General for exchange and withdrawn by the proprietors. The following letters were then read.

“ Comptroller-General’s office, June 21, 1792.

“ S I R,

“ A NUMBER of the New-Loan certificates said to be lost or stolen, and which are provided for by the Act, entitled “ An Act for the relief of the estate of Sarah Caldwell, and also for the relief of Mary Beer, James Steer, and John Thompson,” have been and are presenting at this office for exchange. The said Act directed and they have accordingly given security to the commonwealth to indemnify the said commonwealth against the said certificates. The parties who produce them shew that they have purchased them bona fide for a valuable consideration; as the Continental certificates for which they were given are already delivered up, they cannot be delivered again, but the parties claim an equivalent, and the object of this application is to receive the instructions of your excellency, whether under the circumstances of the case, the nature of the certificates payable to bearer, the security which hath been taken as aforesaid, and the Act of 27th March 1789, allowing the holder of such certificates to receive a like amount in Continental certificates. The laws as well as the reputation of the State do not require that the parties as
aforesaid

aforesaid should have their certificates exchanged on their application.

JOHN NICHOLSON."

His excellency the Governor
of Pennsylvania.

"SIR,

June 23, 1792.

"BEFORE the Governor can give an answer to your letter respecting the New-Loan certificates which tho' said to have been lost, or stolen, are now presented to be exchanged at your office, he wishes to know the names of the respective holders, and the nature of the testimony which they offer to prove that they are *bona fide* purchasers for a valuable consideration. On receiving this information he will probably refer the consideration of the subject to the law officer of the State.

I am, &c.

A. J. DALLAS."

To the Comptroller-General
of Pennsylvania.

"Comptroller-General's office, June 25, 1792.

"SIR,

"THERE have been certificates of John Thompson produced at this office by—

"Clement Biddle, Esq. who shews the bill of sale from the last holder.

"Solomon Marks, junior, who produces two from preceding holders.

"Robert Ross who produces a bill of sale from the last holder before him.

"The two last have withdrawn their certificates and parted therewith to others.

"The above is in pursuance of the Secretary's letter of the 23 instant. I am, &c.

JOHN NICHOLSON."

His excellency THOMAS MIFFLIN, Esq.
Governor of Pennsylvania.

The above letters prove the practice.

Some witnesses were called, and in waiting for them some time elapsed: Mr. *Tilghman* had some time before handed the deposition of *Hans Hamilton* to the Attorney-General of the State of *Pennsylvania*; in this interval Mr. *Tilghman* requested the gentlemen concerned in the prosecution to declare whether they would or would not oppose its being read to the Senate—he observed that it would take a fortnight to procure another deposition as Mr. *Hamilton* lived over the mountains in *Westmoreland* county, the roads being in a bad condition, and mentioned that Mr. *Smith* who knew that rout well, said it would take that time to complete the journey.

Mr. *Ingersoll* observed that it was extremely disagreeable to him to procrastinate the trial, or delay the proceedings, but to admit ex parte evidence or depositions was also against his inclination, if he should admit the testimony offered he might incur censure.

If on the other hand the witness should again say what he had said before, the refusal of the deposition might have some unfavourable construction, he did not wish to do any thing that would incur censure on the one hand, or could be construed as an hardship on the other, he wished to consult his colleagues on the subject, that his duty as an Attorney on this side, and his conduct as a fair adversary on the other might be manifest.

Mr. *Lewis* observed that the character of the witness was unexceptionable, and the Managers might do as they pleased.

Mr. *Tilghman* agreed to any time the Managers and their Counsel would appoint to prepare interrogatories to the witness.

Col. *Porter*, sworn.

Ques. by Mr. Tilghman. Inform the Senate whether you have, or have not lodged any certificates with the Comptroller-General, and afterwards took them away?

Ans.

Ans. I am unprepared to give evidence; I recollect having left an abstract of New-Loans with Mr. *Nicholson* for the purpose of re-exchanging; do not recollect dates, amount, nor numbers, nor whether it was after or before the 10th April, 1792, but probably it was in 92. I applied to the Comptroller and got them, having an occasion for an immediate sale.

Thomas Hale, sworn.

I have withdrawn one or two certificates from the Comptroller's office after I had deposited them there, I subscribed them afterwards with Mr. *Smith*, an abstract being first made out, when I first left them I did not know I could subscribe them, I gave no reason for withdrawing them: I got my information out of doors, I do not recollect that New-Loans were rising in price, nor whether the transaction took place in June or July: I left them in the morning and took them away in the evening of the same day.

Daniel Stroud, sworn.

I lodged a great many at one time in Mr. *Nicholson's* office, they remained several days. I withdrew them because I thought I could do better than to exchange them, this happened about the beginning of the year 1793. I gave no reason for withdrawing them, Mr. *Nicholson* had no objection.

Adjourned till half past nine o'clock to-morrow morning.

In the minutes of the House of Representatives the following entry is recorded:

"In conformity to the resolutions of the 25th February last, the House resolved itself into a committee of the whole, in order to attend the trial of *John Nicholson*, Comptroller-General.

"The Speaker quitted the chair and Mr. *Wynkoop* was placed therein.

"The committee of the whole then proceeded to the Senate-chamber for that purpose.

"After some time,

"The

“ The committee of the whole returned to their own chamber.

“ The Chairman left the chair and the Speaker resumed it.

“ The Chairman then informed the House that the committee of the whole had attended the trial of *John Nicholson*, Comptroller-General.

“ The committee appointed to manage the trial of the articles of impeachment against *John Nicholson*, Comptroller-General, reported further progress.”

Ninth day of the trial.

SATURDAY, MARCH 8, 1794.

SENATE met pursuant to adjournment.

After some consultation Mr. *Ingersoll* informed the counsel for the defendant that the committee of managers had instructed him not to admit the deposition of *Hans Hamilton*. His reasons :—

Because it was taken in this city the 27th of January last, the Legislature then in session, the attorneys for both sides in town, Mr. *Nicholson* might have detained the witness by *subpœna*, or if the witness should think it too long, the Attorney-General might have been consulted, and they would have managed it, that his deposition might have been taken in the regular way, that the practice of taking depositions privately is very exceptionable, and if taken in the absence of the opponent is discountenanced by courts of law, a witness may commit himself by giving sundry depositions; that the Comptroller knew, or knew not, that this charge would be brought forward, or was uncertain; if he knew it, he should have given notice, if he knew it not, it was strange he took it at all, if he was uncertain he might have had a specification of the charges, if he had asked for such specification. That it was a week

or

or more since he called for the book of Exchanges, no intimation was then given of the deposition, nor since until the evening of the day before yesterday, that the deposition could not be admitted, nor the trial postponed; that the day of trial had been fixt, and every obstacle could have been removed on proper application.

Mr. Tilghman. I acknowledge that the deposition cannot be admitted agreeably to the strict rules of evidence. However well this point may be known to the committee and their counsel, it was unknown to the counsel of the Comptroller-General, till lately; Mr. Nicholson did not consult us; if he had applied to us, I can't pretend to say what we should have advised him to do. I request however that we may have time either to procure his deposition, or liberty to prefer the present deposition. If the defendant had been negligent, it is hard to condemn him unheard. One of the Managers agreed to inform the Comptroller whether this would be brought forward on the trial or not, which was not done.

Mr. Ingersoll. I can't conceive that a witness can come forward as well as if he had not been previously sworn; I will however agree to say nothing about *Hans Hamilton*; If there can be a return of the commission before the argument will be closed: I have no doubt but a return may be had without interruption.

Mr. Tilghman. I think the proposition a fair one, Mr. *Hamilton* is known to some members of the Legislature. And if the answers cannot be had in time, the Senate will judge whether they will wait for them or not.

Some arguments were adduced respecting the postponement of the 6th and 7th articles, at last it was agreed to omit *Hans Hamilton* altogether.*

R r

Mr.

* The Editor having procured a copy of the deposition takes this opportunity to lay it before his readers.

Hans Hamilton deposeth and saith, that finding on application at the Comptroller-General's office, and that of *Thomas Smith*, Esq. that he could not get his business done without being delayed long at expences in this city, he did in the year 1791 apply to *John Nicholson*, Esq. with the following

Mr. *Tilgbman*. I will now proceed to the interrogatories and answers of *Blair M'Clenachan*.

Here Mr. *Tilgbman* shewed from the book of exchanges kept in the Comptroller-General's office, that Mr. *M'Clenachan* had brought upwards of 74 thousand dollars to the office and had them exchanged. He also shewed the abstracts of these exchanges made out for Mr. *M'Clenachan* as it was usual for the parties to do before their exchanges were made at the office.

Mr. *Evans* asked when the entries were made; the answer

following certificates of New-Loan, as near as he can remember, and from comparing with a list of said certificates now in his possession.

£.669	18	2
242	7	6
268	0	0
24	6	0
4	19	6
31	16	0
4	19	6
12	15	2
1239	1	10

“That the said *John Nicholson* proposed to him to prevent his longer stay and expence, that he would commute with him the said certificates for the like sum in funded stock of the United States, as he would be entitled to receive from the public or the value thereof, that the deponent thereupon agreed thereto, and left his certificates aforesaid, and took the obligation of said *Nicholson* to do as aforesaid, which paper he hath since lost. That upon the deponent's coming down in April, 1792, to the city of *Philadelphia*, he applied to said *Nicholson* who gave him a line to the Bank, where he received his interest on stock transferred to him by said *Nicholson* as he had contracted to do; that having lately come again to the city he hath on application, received from said *Nicholson* the certificates for his stock as aforesaid, and having settled with him respecting that transaction, he hath been fully paid in cash by said *Nicholson* for a balance of the stock, which had not been transferred to him.

“The deponent further saith, that in all the above dealings, and in other private transactions which he hath before had with said *Nicholson*, he hath found him to be upright, and hath faithfully executed all his engagements with him; and farther this deponent saith not.

HANS HAMILTON.”

“*City of Philadelphia, ff.*

Before MATH. CLARKE, Mayor.”

fewer was, when the indents were paid: the abstracts were made immediately—and these were all the exchanges that were ever made for Mr. *McClenachan*.

Mr. *Tilghman*. I will now take a retrospective view of the articles of impeachment, and first of the 7th, which if taken by itself, and no objection hereafter to be made the testimony fixes no criminality on the Comptroller-General; the 5th and 6th are not supported, no criminal conduct in him to do what any person might have done, the exchange had not been prohibited, any person might purchase. 4th article, the holders of principal and interest are entitled to draw their money out of the 12th appropriation—it is evident he used no deceit.

3d article. It is manifest that he used no deceit with the Register-General or other officer, the account was sent forward in a positive manner, the amount of the nominal sum plain, no disguise in the transaction, the abstract was in his own name, from the nature of the account they might easily discover they were New-Loans, he did not certify *genuine* and *assumable* in his own case. The 1st and 2d articles—the 6th section provided a redemption pound for pound. Whatever was subscribable was redeemable. Attend to the Act of March 1789—"Many would be willing to exchange" others would not, shall those who are unwilling, be excluded, this is a misconstruction, any other construction than ours would be derogatory to the honor and dignity of the State.

If the defendant had been mistaken, here is a great question, whether he acted with a fraudulent design, or whether his actions were the result of his judgment, his opinion was not simulated but genuine and positive that the New-Loans were subscribable to the loan of the United States. To convict him there ought to be proof clear and unequivocal; the consequences of that conviction are terrible, not only dismissal from office, but incapacity of holding any post of honor or profit, the party who attempts to criminate should prove the charges. Six of the seven articles conclude with "*Loss*
and

and injury to the commonwealth." What loss and injury? she only paid pound for pound, she received full value, she promised to pay pound for pound, consequently ought to pay full value, this is no injustice. Can any saving of money be put in competition with national honor and the immutable principles of justice? and yet six of these articles conclude—*with loss and injury!* I have no doubt of his construction of the law being true and genuine, I shall therefore leave the matter to the Senate, trusting that as the issue is important, so the decision will be honorable to the Comptroller-General.



MR. GIBSON,

*Mr. Speaker, and
Gentlemen of the Senate,*

THE order which as Counsel for the defendant I shall observe in replying to the articles of impeachment, will conform to that pursued in the arrangement of the articles themselves. I shall accordingly begin with the first which appears of the greatest importance, and serves as an introduction to the others.

This article, after declaring that the New-Loans ceased to be a State-debt on the passing of the Act of March 1789, charges the defendant with certifying them to be subscribable to the loan of Congress as debts of *Pennsylvania*, contrary to his official trust, and as he well knew to the manifest injury of the commonwealth.

The substantial part of the article consists in the position that the New-Loans were not State debt after March 1789, nor of course subscribable to the loan, and grounds on this basis the subsequent charge of guilt in the defendant in declaring them to be subscribable.

To ascertain the weight of this position it will be necessary to ascend to the origin of these certificates, and to trace them from that time to the period mentioned in the article.

These

These certificates are derived from the Act of the 1st March 1786. Vol. 2. p. 417.

This Act after mentioning the occasion of passing it, directs the mode of issuing the certificates and places them upon the same footing with the most favored certificates of the state.

The first section declares "it is just and proper that the patriotic citizens of this State, who in the late arduous conflict, yielded their property and their personal services to the public use, and thereby eminently contributed to the establishment of the peace, liberty, and safety, of the United States of America, should be relieved, as far as circumstances will admit, from bearing an undue proportion of the public burthen, which ought to rest equally on all the citizens." The second proceeds to direct blank certificates to be procured, and prescribes the form, viz. The commonwealth of *Pennsylvania* has received on loan from the sum of to be paid to the said or bearer on or before the first day of March in the year of our Lord one thousand seven hundred and ninety-six, with interest from the day of at the rate of six per centum per annum to be paid half-yearly at the State-Treasury according to the directions of an Act of the General Assembly, passed on the day of . The third directs the loan to be opened, to continue so two years, and regulates the dates of the certificates to be issued. The fourth distinguishes the kinds of Continental certificates to be received. The sixth and seventh mention that certain Continental Loan-office certificates issued between 1 Sept. 1777 and 1 March 1778 are subject to liquidation by the scale of depreciation on their final redemption, altho' the possessors are entitled to receive the annual interest at full value on the nominal sum until such redemption takes place, and direct a reference to these certificates to be made on the New-Loans issued therefor; that on the payment of the *principal* they may be subject to the same liquidation.

The other sections provide for the payment of the interest on the New-Loans half-yearly—make them redeemable at the Land-office—provide for the Continental certificates received and for conducting the loan.

A Supplement to this Act was passed 28th March 1787, p. 508, extending the loan to those citizens who had made loans in the Continental Loan-offices of *Delaware* and *New-Jersey*.

From the whole complexion of this Act it appears that the Legislature considered the certificates issued in pursuance of it, or in other words the New-Loans, as effectually State debt, as those of any other description. For they on the face of the certificate promise to pay the principal on or before the year 1796, and the interest half-yearly until that time. The Land-office is open for their reception as for other certificates; and those which were peculiarly situated as already mentioned, are directed to be reduced to specie value on the payment of the principal.

The merit of the holders of these certificates was equally great, with the holders of any other. The debts were contracted in a common cause—the citizens of *Pennsylvania* were the creditors, and the State herself enjoyed in common with the other States, the benefits of their exertions.

That the provision made in this Act was designed to be permanent, and the New-Loan creditors considered by our Legislature of the most meritorious class, will appear in the strongest manner by referring to a resolution of the Legislature upon this subject on the 27th December 1786, Minutes of Assembly, p. 97.

This resolution took place upon a very pressing occasion—Congress being much embarrassed, appointed a committee to disclose to our Legislature the urgent state of their affairs, and to request an immediate grant of the impost to enable them to comply with the engagements of the Union.—The Legislature after paying all the attention due to the importance of the occasion, resolve in words as strong as language can express, that
their

their engagements to their own citizens prevent them without a breach of good faith from complying with the request, at the same time informing Congress of their unfeigned regard for the honor of the United States, and of their unremitted exertions to do all in their power to support it. (The report is as follows.)

“ The report of the committee to whom was referred the report of the committee of the late House of Assembly, appointed to confer with the honorable Mr. *Monroe* and Mr. *King*, read December 15th, was read the second time, and adopted as follows, viz.

“ The committee, to whom was referred the report of a committee of the late House of Assembly, appointed to confer with the honorable Delegates on their mission from Congress, beg leave to report——

“ That they have examined the object of the said report with the attention due to its importance :

“ That they cannot help considering the debt of the United States in one aggregate point of view, and are of opinion that the principles of justice require like payment of every part, whether the same be due to foreigners or citizens :

“ That there appears to have been due to the citizens of this commonwealth a sum which she has undertaken to pay them, and which probably amounts nearly to her proportion of the whole debt.

“ That the appropriation of funds for that purpose is of such nature, that the report now referred to your committee (and which was adopted by the last Assembly) declares, “ an immediate compliance with the recommendation would involve a breach of the faith of this state, pledged to the public creditors, citizens thereof, unless at the same time some further and other funds were provided for payment of the interest due and which shall become due to them :”

“ That in the opinion of your committee, the magnitude of the appropriation just mentioned renders the provision alluded to in the report impracticable.

“ That in the opinion of your committee, it would
neither

neither be just nor prudent to call on the citizens of *Pennsylvania* for payment of taxes, to discharge the money due to others, while that which is due to themselves is unprovided for.

“ Your committee therefore propose the following resolution :

“ That the Delegates of this State in Congress be instructed to assure the United States of the sincere desire of *Pennsylvania*, to make an adequate provision for all the debts of the Union ; that this desire, fully evinced by her ready compliance with past requisitions, will equally operate on future determinations ; that the distress of her citizens, to whom large sums were due, and who were at the same time compelled to pay their proportion of supplies for the current expenditures, called loudly for relief ; that having waited in vain for a general assent to the measures proposed by Congress, until the grievance complained of could no longer be borne, it became necessary to assume the payment of those sums which were due by the Union to her own citizens ; that in consequence, the funds now required by the United States were appropriated to this object, and the debts due to individuals were transferred to the State, whereby *Pennsylvania* became the creditor of the Union ; that this House cannot divert the funds specified from the appropriation formerly made, until such solid provision be made for all the public debts, as that the annual interest payable to *Pennsylvania* will be a certain and sufficient fund for discharging those sums, which she is bound in the manner abovementioned to pay to her citizens, but that *Pennsylvania* will in the mean time account for her full quota of the sums necessary to discharge the interest, and instalments of principal, due or to become due by the United States, and, after deducting therefrom the interest she is entitled to receive, will regularly pay any balance that may remain due on such quota.”

In this situation the New-Loans continued ; a debt deliberately formed, and sanctioned by this resolution,
until

until the Act of the 27th of March 1789, p. 694, which it is contended has destroyed the debt.

It may be proper to glance at the situation of affairs at the time of passing this Act, before we proceed to consider the Act itself. For by seeing how far the necessity of the times required an alteration, and what alteration was requisite to answer and remove that necessity, we obtain a good criterion to determine the true intent of the law;—as the first must have been the cause inducing the Legislature to pass it, and the last the object designed to be accomplished by its passing.

It appears then that by the Act of March 1786, the Legislature freely and openly established the loan upon permanent and liberal principles, that they had constituted a debt, which they considered themselves *absolutely* bound to discharge, and which they could not, consistently with good faith attempt to injure. In the year 1789, from the establishment of the Federal Constitution, Congress became entitled to the impost, and the State was in consequence deprived of her most useful and productive revenue, and was utterly unable without additional taxes, to discharge the annual demands. These additional taxes it would be too burthenfome at this time to levy, as the citizens exclusive of those they paid in common, were then paying an annual land tax of £.76,000; many of the former were greatly in arrear, and of course no additional one would be punctually complied with. The best mode that occurred to remove these difficulties was to suspend the payments of the New-Loan debt, which from its greater magnitude pressed harder than any other. The suspension of the principal (which might easily be done as the payment could not be exacted by the contract before 1796) immediately closed the Land-office against it, which in consequence became a more productive fund for the redemption of the other debt, and together with the present stoppage of the interest, would remove the embarrassment occasioned by the loss of the impost. As Congress would probably provide for the public debts,

S s

being

being constitutionally authorised to do so, it would be but fair to permit these creditors to enjoy the benefits of such provision, as a compensation for the loss now suffered, and to enable them to become Continental creditors for that purpose.

That this was the intention of the Legislature we may not only presume from adverting to the situation of the times, but it also appears from the complexion of the Act itself.

The first section which constitutes a lengthy preamble, recites the Act of March 1786, with its supplement, and states the actual situation of things. That Congress have power to provide for the public debts; that they have become entitled to the impost, which the State consequently loses; that the aggregate fund, out of which the New-Loans were paid is diminished by the withdrawing of the impost; that Congress will no doubt provide for the creditors; and declares that on these considerations the relief granted by the preceding Acts should cease, provision should be made out of the Treasury of the United States, and that proper alterations are necessary.

This preamble conforms to the statement just given. As far as there is a recital and construction of the preceding Acts, they must both conform to them. The Legislature certainly had no design to deceive—nor to form a construction, nor to pursue measures, in consequence of such construction which the Acts themselves or public faith would not warrant. The provisions made in the former Acts were designed to be permanent, and if public necessity now compelled an alteration it justified it no further than the inability of the State required—that inability required no more than a temporary suspension of payment, and justice to the creditors demanded that to compensate this loss, they should be entitled to any benefits Congress might grant by exchanging their certificates should that measure become necessary. This Act should not be considered separately and distinctly, but relatively to the others on the subject,

ject, and the construction be determined from a general view of the whole.

The alterations intended are contained in the second section, which directs "That the interest due and to become due and payable upon all and every the certificates issued by the Comptroller-General in pursuance of the said recited Acts or either of them, shall be paid up so as to complete the payment of interest to four years; and that so much of every Act or Acts of General Assembly as directs or secures the payment of the principal sum or sums in the said certificates or any of them mentioned, or of the interest thereof beyond the term of four years shall be and the same is hereby repealed and made null and void."

The Legislature instead of repealing the Act of March 1786, or destroying the certificates, declaring them in the language of the impeachment to be no longer a debt, or evidence of a debt, due and owing from the State of *Pennsylvania*; merely repeat that part of it, which provides for the payment of the principal or the interest beyond 4 years: the remainder therefore of the Act continues in full force and every thing already completed stands unaffected. The expressions *null and void* could not be here intended to have any reference to the past, because the interest is directed to be paid on the whole to complete 4 years, and in order to comply with this requisition payments must in many instances be made of interest *accruing after* the passing of this Act, as in these cases its commencement was not four years before its passing; the whole clause therefore with respect to payment, operates on some as a present on others as a future prohibition, but in no instance as a retrospect.

Moreover had the Act of March 1789 entirely repealed the Act of March 1786, it would not have thereby effected the destruction of the certificates. They were completed under the Act while in full force, and could not be injured by any subsequent repeal. Like titles
under

under laws that afterwards become obsolete, expire, or are repealed they still remain in full vigour.

The Act also of March 1789 so far from having a retrospect to the past, only refers to the present and the future, and besides the payment of the interest already mentioned, contemplates the probability that many New-Loan creditors may wish under the circumstances in which they are placed, to retake the Continental certificates loaned to the State, and therefore appropriates them *a fund* for the redemption of the New-Loans to such as chuse to take them; the 3d section regulating the proceeding—Council under whose direction the whole was placed, among other regulations direct by rule 3d that where an equal exchange cannot be made *fresh New-Loan certificates* shall be issued for the balance. These have accordingly been issued in numerous instances, and have always been considered of equal validity with those originally issued. This could not be justified had the law *abolished* the certificates, as their circulation would be destroyed, they would no longer exist a demand against the commonwealth, and of course no new ones could legally be issued.

Had the Legislature designed to annihilate the debt, they certainly would have taken effectual measures for that purpose and have abolished the certificates altogether. An apposite instance has taken place in *North-Carolina*, where the Legislature designing to destroy certain certificates, commonly called Warrenton certificates, which had corruptly issued, altho' under legal authority; they explicitly declare that *all the certificates* of this description are *null and void* and shall not be received in payment of taxes or any other public demand whatsoever. (*North-Carolina Laws*, p. 475.)

Let us suppose however for a moment, that the Legislature designed to destroy these certificates. It would then be contended that they were deprived of the power. At the time of passing this Act the Federal Constitution was in complete operation: The 10th section of the first article declares that "No State shall enter into any treaty,

treaty, alliance or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make any thing but gold and silver coin a tender in payment of debts ; pass any bill of attainder, ex post facto laws, *or law impairing the obligation of contracts*, or grant any title of nobility.”—That the state by the first Act, contracted with the holders of New-Loans and engaged herself to pay them, can admit of no doubt, for independently of the Act itself, it is solemnly acknowledged in the resolution of December 1786. As little doubt can be entertained that if the Legislature in the last Act, intended to destroy the debt, it was invalidating the engagement and of course impairing the contract. This Act therefore if designed for this purpose is *void* by the Constitution of the United States. This Constitution was lately adopted ; it had been fully debated before its adoption ; many of the members of this Legislature had also been members of the Convention that adopted it, they must have been fully sensible of its obligatory force, and little inclined to act in direct, and it may be added, violent opposition to it.

To construe this law then, as an *abolition* of the debt, would be to make it violate every principle of national honor and justice—to operate in the nature of an ex post facto law, rescinding contracts fairly made, and solemnly acknowledged to be binding—it would make the Legislature act in direct opposition to their former explicit declarations and the Federal Constitution—it would in fine be supposing intentions very different from those that actuated the Legislature at the time.

We have seen then that the occasion did not require an abolition of the debt ; that a repeal of the whole Act of March 1786 would not effect it, much less then a repeal of a particular part—that it would be contrary to the principles of justice and the Constitution to destroy it—of course we have no reason to presume that the Legislature intended it.

Indeed

Indeed the intention of the Legislature as it may be collected from succeeding acts upon this subject, appears to have been very foreign from abolishing the debt.

By an Act passed 7th April 1791, p. 51, the Governor is directed to negotiate a loan with the bank of *North-America*, which when effected, together with the other funds are formed into an aggregate fund to discharge certain obligations of the commonwealth, and these are to be paid agreeably to the order they are arranged in by the Act. Among others are the arrearages of interest due on the New-Loan certificates. These certificates are here classed among the other obligations of the State, as certificates *still in existence*, and the arrearages of interest are directed to be paid prior to any future interest on the funded debt.

An Act passed 30th September 1791, page 147, giving relief to *Sarah Caldwell* and others, who had lost New-Loan certificates, after reciting the particulars of their case directs sufficient security to be given to *indemnify* the commonwealth *against the certificates* before the relief can be granted. It is remarkable also that this Act pursues *exactly* the same expressions in requiring the indemnity against the certificates with those used in a former Act passed for the relief of *Sarah Caldwell* long before the Act of March 1789, viz. 4th October 1788, page 535, sect. 2. If these certificates were *destroyed* by the Act of March 1789 they would no longer be recognized by the Legislature as certificates *of this state*—If the state was not *answerable* for the amount of them it would be useless to require an *indemnification*—This indemnification is *general*, being intended to guard the state against *any injury* that could possibly arise from granting relief in the premises, or the New-Loans tho' lost might still be in circulation. As the *same* requisitions are made in this Act that are made in the first mentioned one which preceded the Act of March 1789 and in the *same* words; we may further conclude, that the Legislature considered them as much *obligations now*
as

as they were *then*, and prudently provided against any contingent injury that might otherwise arise, from granting the relief intended by the Act.

The 3d section of an Act passed 7th of April 1791, page 54, directs the *injurious and impolitic expedient* of re-issuing the bills of credit which the *public faith* was already plighted to destroy; to pay off the arrearages of interest due on the New-Loans, in order that they might not interfere with the arrangements of the commonwealth for subscribing to the loan of Congress. Their *interference* must certainly have been a matter of great importance to render so injurious an expedient necessary in order to prevent it; but in what manner it may be asked can they possibly interfere? If they no longer continue *State debt*, the State is *no longer* under an obligation to pay them, she therefore on this account could have no concern—if they are not *subscribable* to the loan of Congress, they could not interfere with the arrangements of the State for subscribing to that loan; for they would be of no validity, and if offered for subscription, would undoubtedly be rejected. The Continental certificates which the State had received in lieu of the New-Loans, she had already appropriated as a fund for redeeming them, and if they were exchanged for the New-Loans, these last would not be subscribed by the State, because the law of the United States which authorised the subscription, expressly directed an equivalent to be surrendered up, before interest could be paid, and as the State in this instance, would have parted with the equivalent it would be injurious to do it. The New-Loans could therefore interfere with these arrangements in no other way than this; they were at this time both *State debt*, and *subscribable* to the loan of Congress; their quantity (if subscribed) would exclude the other State creditors from subscribing, and deprive the State of the opportunity she now had, of discharging great part of her debts, and of making ample provision for the future discharge of the remainder. In order to improve this
favourable

favourable opportunity, it became a matter of most serious concern to exclude these certificates from subscription, and the State was compelled thro' the want of a better, to pursue the injurious expedient mentioned in the Act, which it was presumed would be, as it actually was, counterbalanced by the result.

By virtue of the Act of Congress of the 4th of August, 1790, two loans were opened; one of the domestic debt to its full amount; the other of the State debts to the amount of 21,500,000 dollars, which were assumed by the United States, under the exceptions and restrictions laid down in the Act. Of these 21,500,000 dollars, the portion allotted to *Pennsylvania* was, 2,200,000, which was payable in those state certificates which prior to the 1st January, 1790, had issued for national purposes. The debt of *Pennsylvania* was at this time classed under three descriptions, Funded debt, Depreciation debt, and New-Loan debt. On the whole of the Funded, and part of the Depreciation (thence called Funded Depreciation) the State paid an interest of 6 per cent.; on the unfunded depreciation, (which included the remainder) interest tho' payable, had never been paid as no funds had been appropriated for the purpose: and on the New-Loans, no interest except the 4 year's arrears was at this time paying. The whole amount of the funded and depreciation debt, did not exceed 1,500,000 dollars; the New-Loans alone exceeded 2,200,000 the sum assumed. If therefore the New-Loans could be *excluded* from subscription, and the holders *induced* to redeem them by the Continental certificates, at the same time proper encouragement given to those State creditors, to whom the State was paying interest, viz. the holders of the funded debt, and funded depreciation, to subscribe to the State loan; the State would immediately get rid of all her New-Loan debt, she would have the amount of the other subscribed, redeemed by virtue of the subscription—her revenues would be relieved from the greater part of the annual interest she was now paying, as upon the plan
she

She was pursuing, the interest she would receive from the unsubscribed residuum, would compensate the subscribers for what they would otherwise lose by subscribing. If on the contrary, the New-Loans were subscribed, they would exclude the others, and add to the burthens of the State. No time however could be more favourable than the present, for accomplishing the plan, and no mode better adapted to the purpose, than the one pursued.

In the domestic loan, the interest subscribed, was separated from the principal, and exclusively became 3 per cent. stock: two thirds of the principal became 6 per cent. stock, and the remaining third, 6 per cents deferred. In the State loan the principal and interest were thrown into a common mass, one third of which was converted into 3 per cent. stock, two thirds of the remaining two thirds into 6 per cent. stock, and one third of two thirds into 6 per cents. deferred. From this last arrangement it followed that unless the interest subscribed, amounted to one third of the whole sum subscribed so much of the principal as equalled this deficiency, supplied its place and was converted into 3 per cents. In order that the interest should amount to one third of the whole, it required an arrearage of eight years and a quarter. In the case therefore of the New-Loans, when the arrearages was eight years and a quarter, the holder might subscribe them to the State loan, or exchange them for the Continental certificates and subscribe these to the domestic loan, since in both cases the interest alone, became 3 per cent. stock. Where the arrear was greater it was his interest to subscribe the New-Loan in preference to the Continental certificate, as the excess of interest became 6 per cent. stock or 6 per cents. deferred. Where it was less it became injurious to subscribe them because part of the principal went to supply the deficiency. By paying off four years immediately on the New-Loans, and discountenancing their subscription to the State loan, (which was done by the Act passed two days afterwards, making the ar-

rangements alluded to in this Act, and which gave encouragement only to the subscription of certificates on which an interest was then paying,) the arrears of interest were reduced below eight years and a quarter, it became the interest of the holder to redeem the New-Loan by the Continental, and subscribe to the domestic loan. It was also his interest to receive the 4 years arrear in preference to subscribing the New-Loan; as the indents to be paid the State on the exchange to equalize the interest, were then low, the amount he paid the State on the New-Loan became due to him on the Continental, and the money paid him by the State became a new principal. The State by agreeing to pay 6 per cent. on the deferred, and 3 per cent. on the 3 per cent. stock, created by the subscription of the other State debt, was a sufficient inducement to the creditor to subscribe, as by this mean the arrears of interest were converted into 6 per cent. stock.

The State by this policy got rid of most of the New-Loans; redeemed 650,000 dollars of her other debt; and became entitled to an interest of a residuum of 1,550,000 dollars, which amounted to nearly 56,000 dollars annually or upwards of £. 20,000. These were the advantages she promised herself from the plan she had then formed; they appeared sufficiently important to be purchased at the expence of this ruinous expedient, and they were effectually secured, in consequence of the measures pursued. These two Acts as effectually shew the ideas the *Legislature* entertained of the *subscribability* of New-Loans as the most express declaration that could possibly be made on the subject.

From the foregoing survey it sufficiently appears, that the Act of March, 1789, *did not destroy* the New-Loans, that in the *opinion* of the *Legislature* they still continued a debt, and were in their estimation subscribable to the loan of the United States. It will now be proper to consider the Act establishing that loan and to point out that part which admits their subscription.

The Act of Congress of the 4th of August 1790,
continued

continued by that of the 8th of May 1792, was formed to introduce order and harmony into the public finances, by reducing to a few kinds the great variety of public securities ;—to make a Continental debt of all those State certificates which had issued for national purposes—and to give security and value to the whole by preventing counterfeits, and appropriating permanent funds for their regular payment. It therefore in the 13th section, page 93, assumes all State certificates or notes which had issued prior to the first of January 1790, as compensations or expenditures for services or supplies towards the prosecution of the war, excepting the Warrenton certificates of *North-Carolina* which were expressly excluded.

The New-Loans clearly come within this description. They were directed to issue, and consequently did issue, only for Continental certificates which had issued for these services. The *services* themselves were the original inducement for issuing them, and Continental certificates of this description only were received.

If this section is construed strictly according to the letter the depreciation certificates about which there has existed no doubt would also be excluded, as they strictly speaking did not issue for *services* but to compensate *losses* occasioned by the depreciation of the soldiers pay ; tho' here as in the case of the New-Loans, the services rendered were the original inducement.

This construction would also operate to exclude a considerable portion of the funded debt, as it stood at the time of the loan. For altho' the greater part of it originally issued agreeably to the letter of the Act, as compensations or expenditures for services or supplies, yet, for the convenience of payments at the Land-office, and to facilitate their circulation, the original certificates were frequently surrendered up, and new ones issued for different sums, and in different numbers as suited the convenience of the party. These last therefore having issued for *other* certificates would agreeably to this *strict* construction be excluded.

In order to accomplish the design of this Act it was as necessary to assume the New-Loans as any other certificates. They were certificates of the State, and the State was a creditor of the United States to an equal amount. Congress therefore by assuming them, and directing that before interest could be paid an equal amount of Continental certificates should be surrendered up, at once withdrew both from circulation. As a holder of New-Loans, the United States could exchange with the State for an equal amount of Continental certificates, and the sum subscribed, for which the State would be debited in her accounts with the Union, she could balance by presenting an equal amount of New-Loans which she had redeemed in this way, and which would be on the same footing with the other certificates she had redeemed.

Could any doubt exist respecting the construction of the 13th section, it must be removed by the 18th, page 97, which considering all certificates situated like the New-Loans, as subscribable under the 13th section, makes the necessary regulations to prevent any inconvenience that might otherwise ensue.

The Secretary of the Treasury in his instructions to Mr. *Smith* the Commissioner of Loans for this State, declares they are subscribable, and directs arrangements in consequence. In his letters to Mr. *Smith*, he constantly considers them subscribable. His negotiations with our government are founded on a belief that they have been *actually* subscribed, and turn at last upon the fact of their having been subscribed or not.

If an inconvenience were to arise to the State in consequence of their subscription, this would not destroy their subscribability. That arises from the *assumption* of Congress and not from any *arrangement* of the State. The loan is opened to the State creditors and the consent or refusal of the State has no concern with it. Congress may assume what debts they please, and the creditor may transfer to them all debts of a transferrable nature. This is a matter entirely between Congress and the creditor.

creditor in which the State cannot interfere more than in the transfer from citizen to citizen. In the settlement of accounts between the United States and this state, the interest commences, and either party may allow or reject such items as are improper, but this can have no effect upon the original assumption, which concerns merely Congress and the state creditor.

One object in view by the assumption was to withdraw the creditor, from the precarious and frequently inadequate relief of State provisions. These creditors were certainly of this description, and in no case except in others similarly circumstanced could Congress assume certificates with so much safety, as they had issued for debts originally liquidated and adjusted by the United States.

I hope then it has been satisfactorily proved, that the New-Loans were in their first establishment State debt; placed on a permanent footing, and highly favoured; that their destruction was not designed by the Act of March 1789; that at succeeding periods they have been considered as State debt and subscribable by the Legislature itself, of course the subscriptions made have been conformable to law.

We now come to the position which forms the essence of the second article, viz. that the New-Loans were not nor could in any way be contemplated as objects of redemption by the Act of April 1792.

This Act was designed to discharge the certificates of the State, and her other obligations which the public interest required and which it was now in the power of the State to perform. Our Legislature had always conceived it to be more advantageous to the State to redeem her certificates in the cases where she had it in her power thro' the *medium* of the United States in preference to *paying them off* and making that payment a credit in her accounts with the Union. This was evident in the first subscription to the State loan which was promoted by the State, and this was their wish in the Act of April 1792 as is apparent from the Act itself.

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By the first subscription the State redeemed all the certificates that were subscribed, and only paid in return that portion of interest which the United States did not, which payment was to continue only until the United States paid it. She now wished to redeem all her debt inclusive of the evidences of this obligation, commonly called Purpart certificates, and altho' she in the present case, paid off the whole in the first instance, yet she received from the United States an equivalent for the greater part of it, which was an active and productive stock annually encreasing in value, and which by good management might be usefully appropriated. The difference in value between the certificates received and the money paid by the State in redemption, which was the only loss sustained by this mode, (for if they were of equal value it would only amount to a mutual exchange of equal interests) was of less consequence, than paying off the whole at once, and that payment remaining a dormant claim upon the Union, until the final adjustment of accounts and provision for the balance should call it into activity. It should be considered also that *Pennsylvania* was at this time deemed a creditor State, to a considerable amount and as in other cases of debtor and creditor, it was more to her advantage to redeem her certificates by way of set-off in this account than to advance more money on it and thereby swell the credit further. Moreover upon striking the balance of this account the State had no reason to presume that she would be more favoured in the discharge of it, than the citizen creditors had been in the payment of their debts, but that certificates would issue to her in the same proportions, they had already issued to them. It was therefore better to receive them now and make them immediately productive than wait a future day.

The Act therefore of April, 1792, after appropriating the 3 per cent. stock as a redeeming fund, and directing certain debts to be paid from the proceeds of the sale; contemplates in the sixth section a further provision to be made by Congress, and directs that all certificates

certificates entitled to such provisions, shall be entitled to the benefits of this Act upon transferring to the state all the benefits the creditor was to enjoy from the provision. The 8th of May following the loan was extended by Congress upon the *same terms*, and of course included all certificates that were subscribable to the first. This Act of April 1792 directing all certificates to be paid that were subscribable of course redeemed them. The New-Loans have already been proved to be subscribable to this loan; and are therefore within the provisions of this Act. That they came within the view of the Legislature at the time, and were designed to be redeemed, will appear from the following considerations. The Legislature knew they were in circulation. They had passed laws relieving those who had lost them. They had endeavoured to prevent their subscription to the first loan, and promote their redemption from the fund provided. In this design they had succeeded so far as to redeem the greater quantity; the whole amount now in circulation not exceeding fifty thousand pounds, a sum comparatively small. Altho' interest was not now paying, it was accruing, and the arrear becoming great. Though the Continental certificates were a fund for their redemption, yet the creditor could not be *compelled* to redeem them in that way. The year 1796 was approaching when they were to be paid agreeably to contract. The extension of the first loan was contemplated in this Act, as the measure most probable, which they knew would include them. In fine, every argument that applies to prove the necessity of redeeming any part of the public debt, applies with equal force in favor of the redemption of the New-Loans.

The third article charges him with not consulting with the Governor, nor the Register-General; nor discriminating the certificates on the abstracts, by which he declared them assumable, nor on the certificate by which he declared them redeemable, by which means
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the checks of office were broken, and the other officers deluded into error.

Both loans were opened with the concurrence and approbation of our Legislature, who promoted subscriptions of state debt by laws enacted for the purpose. It of course became the duty of the officers of this state who had it in their power to facilitate the subscription by their assistance. Mr. *Smith* the conductor of the loan in this state, applied to the defendant before the opening of the first loan (see page 271) to give him a description of the several sorts of certificates subscribable, and such checks as would enable him to conduct the business with security. The defendant was the only person to apply to, he having issued all the certificates of the state, and having all the checks in his possession, he accordingly gives him the required information and at the same time his opinion that the New-Loans *were subscribable*. None can presume he had any interest at this time in giving this opinion, as the loan closed without any subscription of New-Loans being made.

After the closing of the loan; in all the conferences which took place on the subject of New-Loans, by the direction of the Governor, and which were reported to him, the defendant continues of the *same opinion*; no *exception* is made to its propriety, and all matters rested in this way, till the opening of the second loan.

Before the passing of the Act of April 1792, the defendant opposed that plan of redemption and proposed another to the Governor in which New-Loans are expressly provided for. He deprecated the evil consequences which that Act in its original comprehensive form, would probably occasion, and opposed its passing by speaking to members of both Houses on the subject, and pointing them out, (see page 279 to 286.) The Act was afterwards narrowed down to include certificates only. Had he designed to speculate on the Act, it would have been his interest to encourage its passing, or at least not to oppose it; after it became a law he was as much entitled to its benefits as another citizen.

On the opening of the second loan it was discovered, that non-assumable certificates had been subscribed, and the owners in consequence deprived of them until the closing of the loan, at which time they would be returned. To prevent this inconvenience in future, the defendant undertook to examine the certificates brought for subscription, and if they were genuine and assumable, to mark them so. His conduct in this transaction was intended to oblige and assist all parties, it was an undertaking of great trouble, and no profit to himself; the information given, was for the use of Mr. *Smith* and the creditors who might rely upon it or not. There was no law forbidding such proceeding. It was further in advancement of the interest and laws of the State. The mode pursued was the dictate of the moment, the words "genuine and assumable" being sometimes written on the abstract, at other times on the certificate, and in both cases signed with the initials of his name. The matter was notorious. His opinion openly given. No objections advanced against it, and the loan closed without any idea of criminality in his conduct being entertained by any body.

With the *form* of the abstracts the defendant had no concern. *That* was settled by the officers of the United States. Blank forms were printed for general convenience, and printed forms were generally used. As all the certificates *assumable* were *equally* so; there could be no occasion to *discriminate* on the abstracts, their several kinds. If it had been necessary as the information was for Mr. *Smith* he would have requested it. It was not the *duty* of the defendant to do it, as he had merely undertaken, and that voluntarily to declare them genuine and assumable; and it would require more of his time than his official engagements would permit. Since all certificates subscribable were *equally* redeemable, there could be no occasion to *discriminate* on the abstracts on the transfer to the State their several kinds, because they were to be *equally* paid. If it were, the Register-General should have done it, as they came be-

fore him in the first instance, and it is his duty to register the accounts of the State. After his examination, they were presented to the Comptroller-General accompanied with a demand on the State for payment. The *abstracts themselves* afforded every information that a discrimination could, for the *dates* of interest marked on the abstracts, distinguished the several kinds of certificates; the interest on the funded debts commencing on one fixed date, that on the depreciation on another, and that of the New-Loans on various and mixed dates, all of them however distinct from the other two. There could have been no design in the defendant to conceal any circumstance relating to the New-Loans from the Register-General as they had had a conversation on the subject, in the course of which they both concurred in opinion that the New-Loans were subscribable and redeemable, and the Register-General afterwards passed the accounts knowing them to contain New-Loans.

His own subscription being *openly* made in his *own* name, confutes the idea of any clandestine design, and strongly shews his thorough conviction of being right in his opinion. Had he supposed the contrary and wished to deceive, how easy would it have been to divide the sum into small parcels, and procure other persons to subscribe for him in their own names. The idea that he meant to deceive until he obtained *possession* of the money which seems to be advanced in this article, is too futile to have any weight and was perhaps introduced more from inadvertence than design. Detection would eventually be certain; and the consequences of that detection would be disappointment and disgrace. His own subscription was not hurried thro' the offices, it remained the usual time with the Register-General who might, and probably did, examine every item.

No checks of office have been broken. No official consultation is required by law in *any* instance; nor can there legally, be any *interference* of the Governor
except

except upon a *difference* of opinion between the Comptroller and Register in which case he is called in to decide: Here was *no* such *difference* of opinion and of course there could be no *interference* of the Governor. The Governor also knew from the defendant's former communications, and his late proposal for new modelling the debt, made at the time the Act was before the Legislature, that he considered the New-Loans as a debt and at a future time to be redeemed. The certificate presented to the Governor on which his warrant was grounded was in the *usual form*, there could therefore be no *concealment* implied in it. The accounts which were presented and adjusted and in consequence of which adjustment this certificate was drawn, were also presented in the *usual form* and therefore would not *authorise* any deviation from the usual course of proceeding. Any cause that would require a *discrimination* of the New-Loans would also require a *discrimination* of the funded debt and the depreciation certificates. Yet no such discrimination has been made and no complaint has arisen in consequence.

If any interference in the second loan by the defendant was wrong from principle it was equally wrong in the first loan, for the two loans were precisely upon the same footing. Yet no fault has been found with him for it; and he has only been criminal according to the articles for acting between the 10th of April, and 1st of August 1792, the *principle* is therefore admitted to be right and the *execution* only wrong.

But if it be (as we hope we have proved) that the New-Loans were subscribable and redeemable, that all the proceedings on his part have been regular and legal; he has acted in every instance right and is a subject of commendation rather than blame.

Even on the supposition of his having formed a *wrong opinion*; that opinion has been proved to be formed, when there was no *interest* to induce him to form it. To be advanced upon every *public occasion* that required it. To be persisted in and mentioned at a time when
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a *selfish* interest would induce a concealment ; and we cannot look for a *change*, when it had received a *sanction*, from *time*, from meeting with *no* opposition of sentiment, from the *concurrence* of others in the same, and when *nothing* additional arose to occasion an alteration. Even then upon the supposition the opinion on examination shall be found erroneous ; it was innocently formed and cannot subject its author to the pains and penalties of an impeachment.

The following positions then have it is hoped been fully established. That the New-Loan certificates continued a *State debt* notwithstanding the Act of *March 1789*, which did not contemplate their destruction, and which could not effect it had it been its design. That they were *subscribable* to the loans of the United States and *known* and *acknowledged* to be so by the Legislature itself. That they were *redeemable* by the Act of *April 1792*, and *designed* to be so by the Legislature that passed the Act. That no *checks of office* have been broken, of course the defendant has *broken none*. That his conduct throughout has been open, candid and sincere, and *strictly* conformable to law in every particular. That his *opinion* on the subject is *right* and so *innocent* in its formation that had it been *wrong* he could not be amenable to punishment in this prosecution.

In the minutes of the House of Representatives the following entry is recorded :

“ In conformity to the resolutions of the 25th February last, the House resolved itself into a committee of the whole, in order to attend the trial of *John Nicholson*, Comptroller-General.

“ The Speaker quitted the chair and Mr. *Wynkoop* was placed therein.

“ The committee of the whole then proceeded to the Senate-chamber for that purpose.

“ After some time,

“ The committee of the whole returned.

“ The

“ The Chairman left the chair and the Speaker resumed it.

“ The Chairman then informed the House that the committee of the whole had attended the trial of *John Nicholson*, Comptroller-General.

“ The committee appointed to manage the trial of the articles of impeachment against *John Nicholson*, Comptroller-General, reported that they had made further progress.”

Tenth day of the trial.

MONDAY, MARCH 10.

MR. RAWLE.

*Mr. Speaker, and
Gentlemen of the Senate,*

I HAVE the honor of being of counsel for the House of Representatives of the commonwealth of *Pennsylvania* who are the exclusive Representatives of the People of this State, and they found it their indispensable duty to execute their constitutional right of bringing before the Senate, in this instance, the exclusive Judges, a public officer who has long superintended the finances of the State, under a serious charge.

John Nicholson, Comptroller-General of *Pennsylvania* is accused of having violated the confidence and betrayed the trust reposed in him. Upon common cases the hand of the law is directed by the ordinary courts of criminal jurisdiction. The Senate is constitutionally assembled to decide upon a cause in which the interests of a People are involved to which the common limits of practical law are scarcely applicable.

A cause which requires the more consideration as it is the more rare, since public trusts are confided but to a few, and since violation of these trusts are happily uncommon, the present is recorded as only the first
under

under the present Constitution of *Pennsylvania*, every good citizen will wish it may be the last.

To constitute an offence there must be a concurrence of fact and of intention.

The errors of the judgment cannot be criminally punished.

But when by the aid of testimony we probe the heart, when motives unlawful from the station and the opportunities of the agent are already proved to be the excitements to action—then the act is closed in the list of offences, and the voice of society calls for its judicial animadversion.

Of offences there are two general classes, one is found in the breach of any positive law, municipal institutions, or statutes.

The other in the breach of a law not of human institution but impressed by nature on the heart.

The penalty of the first may be incurred without any criminal intentions, but the other depends upon the will, ignorance may at times occasion a lapse into the first, the other is known to all men at all times, in all places.

The defendant's counsel have anticipated another very obvious division of the question; that is, that the Comptroller acted under a proper or mistaken construction of the law. If the latter, corrupt motives must be plainly charged, and clearly proved.

If we shew that the defendant made a profit against law, the impeachment is supported. If we shew that impelled by improper motives, by artifice and dexterity he evaded, altho' he did not break the law, it is equally supported, and the commonwealth is entitled to judgment against him.

Something has been said as to the manner of framing the charges.

It has been stated only to be waved, and at the same time the Senate is informed that the defendant does not well know what he is to answer, you're told that he will go fully into his answer.

If we pass this over we hear of it as a defeat. If we confute the objection we are told they did not mean to rely on it.

But we aver the charges are exhibited in the authorized and customary form, that the minute certainities of indictments are not requisite, that nothing is intentionally dark or tending to deceive, and that as in some instances of indictments the defendant may require a specification, these are framed conformably to well established precedents in another country. (Here Mr. *Rawle* quoted 2 vol. *Woodeson*, page 605, and *Foster's* reports of Crown Laws, 389, 390, to shew that in barratry the defendant is not compelled to answer until a specification of the charges is exhibited; and said, such was not requisite in impeachments, and therefore concluded it was only want of form and accuracy had been attempted to be shewn; Mr. *Lewis* interrupted him, and said, It is not to the form but to the substance of the articles of impeachment that he intended to take exception.)

The accusation is, in substance divided into six different and substantial heads which Mr. *Rawle* then enumerated including the 5th and 6th articles in one.

1. Declaring New-Loan certificates to be subscribable.
2. Declaring them to be redeemable.
3. Deceiving the Governor.
4. By the aid of such deception drawing money out of a fund otherwise appropriated.
5. Buying certificates actually delivered to him for exchange.
6. Converting to his own use certificates actually exchanged.

The formal arrangement of these charges is comprised in seven articles of impeachment. In all them he is charged with criminal motives, with the Commission of a misdemeanor; and if the evidence is adequate to the charges there is no doubt but the result will be a judgment against the Comptroller-General.

FIRST ARTICLE

Was read by Mr. *Rawle* in a short and abridged manner, retaining only the principal *data*, such as facts, and dates; omitting the useless appendages of amplification.

The general charges are thus opened with the statement of a fact resulting from the plain and obvious text of the law and finally reducible to this single point: Whether there existed a Legislative power in the country.

If the Legislative power resided in the General Assembly, and, if the Act of 27th March 1789 was passed by that General Assembly we have then only to enquire whether it did not abolish the former engagements of the State and reduce the certificates to mere receipts for other certificates.

Without any efforts of ingenuity, or having recourse to messages, votes, resolutions and other proceedings of the Legislature from their minutes, we are led to acknowledge the affirmative from the existence of the Act of March 27, 1789, and to ascertain with accuracy the operation of it, we are led to consider the nature of New-Loans previous to the passing of the law.

The Act of March 1, 1786, depended upon the circumstances of the public at the time, the state possessed the impost, and appropriated it to pay the interest of the reputed quota of the State debt incurred during the late war.

In the year 1785 the Legislature affected by the distresses and yielding to the clamours of many of their own citizens, creditors of the United States, finding itself possessed of a great and growing fund arising from the imposts—by its Act of 16th March 1785, appropriated such a proportion of that fund with the arrearages of the taxes as should amount to £.123,932, the estimated quota of this State of the annual interest of the federal debt.

This Act tho' little noticed, yet deserves no small degree of preliminary attention.

13th section. The State-Treasurer is to pay that sum annually to the Continental Loan-officer.

11th section. Monies arising from imposts and arrearages of taxes so far as released from former appropriations are respectively and expressly appropriated.

Having thus observed, that, this Act, the parent of the New-Loan Act, could not in its outset be considered as otherwise than temporary, for the chief part of the impost being the principal fund, remained only the *conditional property* of the State; *Pennsylvania* having by her Act of 23d September, 1783, acceded to the requisition of Congress in regard to the 5 per cent. and the annual tax as soon as thirteen States should accede thereto.

To this reference appears in the second and third sections of the Act of 16th March 1785.

In the 4th section, one or more have not complied.

In the 5th section, considerable time *may* elapse.

In the 6th section, citizens labour under hardships.

In the 7th section, relief to them, and to accord with such measures as the United States in their wisdom may adopt.

By this it is apparent that the provision made by *Pennsylvania* was temporary, whereas the United States did resolve for 25 years. The declarations of the intentions of our Legislature contained in the last recited sections are expressly affected by the 18th section, in which the provisional limitation of the Act is contained, and this express designation of the original fund confutes one of the arguments of the counsel who opened the defence, (Mr. *Tilghman*.)

I need not enter into messages or resolutions to discover the signification of this provision; it was intended and declared to be temporary and conditional, and as such the Legislature has always acted upon it.

We are told it is of no use to the creditors out of what fund this debt is to be paid, whereas the fund is held out and the party accepts it on the faith of that fund, and that only.

One of the Managers, (Mr. *Morgan*) has stated that Congress was dissatisfied, (see page 211) this leads to consider the Act of March 1, 1786.

The articles of Confederation gave no power to provide the necessary funds for the payment of the public debts. Hope and view on one side, and the actual state of things on the other. For these reasons the Act of March 1, 1786 passed:—

First, The Act is expressly occasioned by the resolution of Congress of the 24th of September 1785, if the resolution had not passed the Act would not have been made. (Mr. *Rawle* read the preamble to the Act 1st March, 1786.)

Secondly, The aggregate conditionally assigned by the Act of 16th March 1785 is the only fund appropriated by the Act of March 1, 1786.

Thirdly, There is no repeal of the conditional clause in Act of the 16th March 1785 by the Act of March 1, 1786; the spirit is the same, only differing in mode, and form from the Act March 16th 1785.

Fourthly, There is no assumption of the principal, for the receivability of the certificates in the Land-office was common to almost all kinds of Continental certificates.

The difficulties of the country increasing, the necessity of a common head became more apparent, the Federal Constitution under which we now so happily live, was formed and recommended the 17th September, 1787. It was adopted by *Pennsylvania* the 13th of December following, and by nine States on the 21st of June, 1788. The Act of 27th March, 1789 adheres to the original contract, it does not deviate from it. The Legislature of *Pennsylvania* on the 27th of March, 1789, found the Constitution thus adopted and ready to be put in execution, it consequently found the fund liable to be withdrawn, it found the United States able to do justice to her own creditors. The people their constituents who surely included the creditors had assented to the subtraction of the fund from their first application. In adherence therefore to the original contract,

tract, they confirmed the payment of interest during the intermediate interval from the first steps taken by *Pennsylvania* to the cessation of the fund: They terminated the payment from that time afterwards.

In the great scale upon which this ought to be considered, the difference of a few months is not to be regarded: The fund ceased the 1st August, 1789, four months after the passing of the Act, when the General Government took place.

If the Act of March, 1789 was inactive and wanted efficacy until that time, it then received it, the original contract was terminated. After that, none who agreed to the federal Constitution can oppose this construction. This subject was ably handled by the young gentleman (Mr. *Gibson*) who spoke last, whose talents exhibited on this occasion are an honour to himself, and promise to be an ornament to his country.

The Act of March 1789 repealed part of the law of March 1786, the law of 1786 repealed that of 1785.

After the passing of the Act of March 1789 nothing of the Act of 1786 remained except what related to the payment of interest: For by that Act three things were to be done, 1. Receiving certificates on loan; 2. Delivering out New-Loans in exchange for others. 3. The payment of interest; the loan closed with the Act of March 1789, after that time no certificates could be issued, certificates issued by the Comptroller-General after that period are unwarranted by law. Issuing was unnecessary, the Act of March 1789 is explained and arguments against our position are answered by this explanation.

The Act of March 1786 was only a loan, it is so declared in every part of the bill. The obligation arising from a loan is ended with the restitution of the thing loaned. *A.* lends *B.* certificates to be paid the 1st of May, *B.* returns the certificates, the loan is ended. Therefore the State is discharged on the return of the Continental certificates, (Mr. *Rawle* then adverted to the certificates and the length of time, and it was acknowledged

knowledge by *Pennsylvania* as a loan to be returned by the first March 1796, or sooner if convenient, and then the whole contract to be at an end, the four year's interest being paid.)

Sir, It cannot be supposed the Legislature of *Pennsylvania* intended to go farther in 1786 than they meant to go in 1785.

In the summer of 1786 the Convention met at *Annapolis*; on the 30th December same year delegates were appointed to the General Convention; at this time a federal Union was expected; the answer returned by the Assembly, 27th December 1786, to Congress is not surprising, (see page 319, 320).

We do then aver, that the Act of March 1786 was only a loan, little comment need be made on the enacting clauses of the law, as the only engagement pretended was not to discharge the principal, but to advance the interest on account of the United States: The Act of March 1789 in unequivocal terms puts an end to that part of the contract, and therefore the New-Loans were not subscribable to the loan opened by Congress. He certified them to be subscribable, we aver the contrary. The public debt of the United States in June 1790 was divided into three classes, 1. Foreign, 2. Domestic, and 3. State debt.

The foreign debt was something more than ten millions: The domestic debt was about forty or fifty millions. Of the State debts an estimate cannot easily be made. To the question what debts were intended to be assumed by Congress, circumstanced as the Union then was, it was proposed to assume the State debts; and to the question, *What were the State debts?* the answer is obvious, debts at that time due by the State.

Mr. *Rawle* then read the 13th section of the Act of Congress 4th August 1790, entitled "An Act making provision for the debt of the United States," the sum assumed being 21,500,000 dollars. The two general heads of SERVICES and SUPPLIES describe the consideration, no other certificates admissible; and the expression

sion in the Act, "debts by them respectively owing," therefore a debt of that kind would embarrass individual States if the fund was withdrawn; *Pennsylvania* had then a peculiar and proper debt, and unless the vacant land and the Continental certificates had afforded a fund, she would be considerably embarrassed, the magnitude of her debt is not easily ascertained now, if understood at first; the holders had no other to look to, setting aside the bills of credit: the amount of funded and unfunded depreciation certificates was about four or five hundred thousand pounds of our money, these were admitted into the general class as being issued for services or supplies in prosecuting the war and for the expences incurred during the general conflict.

The New-Loans were not within this description, they were only available to withdraw the Continental certificates, and four year's interest; this is the fact, so far as we can gather the evidences of the intentions of the Legislature, and as far as we can collect a knowledge of our finances from the laws of our country.

The commonwealth was under no obligation to redeem the New-Loans.

Certificates, therefore originally loaned were divided into two classes.

1. Those which were the property of the State from the New-Loans having been laid out in the purchase of land.

2. Those which were to be presented to the holders presenting the New-Loan certificate for re-exchange.

By the Act of 7th April 1791, no officer of your commonwealth by the Acts of your Legislature could subscribe State debts. Her Continental certificates were an incumbrance to her until the New-Loan certificates were brought forward on the domestic loan.

Two days afterwards, the 9th April 1791, the purport Act was passed by the Legislature; if the State of *Pennsylvania* considered New-Loans as a debt, and subscribable she would have included them in that law. The Act of 30th March 1791 by which the Treasurer

is directed to subscribe, refers to and depends upon the provision of the Act 1st April 1790. By the Act of April 1, 1790 it had been directed that they should be deposited with the State-Treasurer; could he part from them without the order of the Legislature? It was not till the 30th March 1791 that an application was made of them. Then they were subscribed, not to the State, but to the domestic loan.

By this exposition it is manifest that the law of the 27th March 1789 repealed every former provision, and that the New Loan certificates were only a demand to get back the Continental certificates and for equalizing the interest for four years.

I shall not consider the Constitution of the United States, so far as relates to the Acts of a State with its own citizens; no contract was impaired, no *ex post facto* law had been passed; it is not necessary on our part to introduce any consideration about it.

Yet in a charge of an highly criminal nature some extenuation is sought in the endeavour to establish that this was not a single construction of the law; but that others, whose judgments were not perverted by any corrupt motives, were of the same opinion; that the same opinion was entertained by the principal officers of the United States' Treasury. If our construction is right, contrary opinions are erroneous; but had he, with all the light that ought to have been communicated to him, held the same opinion, what shelter can the misconduct of one officer find in the error of another. It is not uncommon to justify the culpable transactions of some by the erroneous judgments of other individuals; if they do not mean this as an extenuation, it is intended as a justification, if not designed as one, or the other, it ought not to be brought forward at all.

Mr. *Rawle* then asked, whether the opinion of the Secretary of the United States, a most respectable officer, should be a justification and a proof of the innocence of the defendant, whereas the Secretary renounced his former opinion on being better informed, this information

formation ought to have been furnished by the Comptroller-General. This opinion of the Secretary should not be depended upon, inasmuch as he renounced the same on better information.

Mr. *Rawle* then read, commented, and made remarks on the circular letter of Mr. *A. Hamilton* to the Governors of the respective States, (see page 275-6). Then on letter *Dallas* to *Nicholson*, (page 276)—then on letter (page 102-3)—then letter *Dallas* to *Nicholson* (page 220)—then letter Mr. *Nicholson* to Governor (page 220-1-2)—then on letter Mr. *Dallas* to Mr. *Nicholson*, (page 277)—then on letter Mr. *Nicholson* to Mr. *Hamilton*, (page 277)—then on letter Mr. *Nicholson* to Mr. *Hamilton*, (page 278).

So far as these communications extend, it is apparent from the evidence or testimony of the Secretary (see his testimony page 287-8-9) that no information of the repealing law of the 27th March 1789 was ever brought before him in a "*prominent point of view*." When that was known, an arrangement immediately took place and the result is known;—Mr. *Rawle* then read the letter from Mr. *Hamilton* to Mr. *Dallas*, (page 76-7-8-9).

It is well known that the Comptroller-General was the only officer of the commonwealth, who had communicated with the Secretary of the Treasury on this subject;—Mr. *Rawle* then read the following letter:—

"SIR,

"*Philadelphia*, July 29, 1793.

"IN order to enable me to communicate to the Legislature of this State, at their next session in August a complete statement of the public finances, I find it necessary to request, that you will decide upon the question, Whether the New-Loan certificates of *Pennsylvania* are within the assumption of the Act of Congress? If the certificates are within the assumption the State will be entitled to the evidence of the debt, for the amount of those, which after being assigned to her, were
subscribed

subscribed to the loan, but if they are not within the assumption they must of course be returned.

“An explanation upon this subject is likewise necessary, to enable the Attorney-General to institute a suit which was directed at the late session of the Legislature to be brought, for recovering the amount of the New-Loan certificates declared by the Comptroller-General of *Pennsylvania* to be assumable under the Act of Congress, and redeemable under the Act of *Pennsylvania*. I am, &c.

THOMAS MIFFLIN.”

ALEX. HAMILTON, Esq.

Secretary Treasury.

Mr. *Rawle*, then read the letter from Mr. *Hamilton* to the Governor, (page 218, 219).

The foregoing letters were commented upon in a suitable manner by Mr. *Rawle*, and he added;—

It is then clear that the New-Loans were never stated by the Comptroller or Register-General as an existing State debt after the Act of the 27th March 1789—Notwithstanding all this we find the Comptroller-General forgetting his official duty, and in 1792 certifying these New-Loans to be *genuine and assumable*; the large abstract is not certified by Mr. *Nicholson* to be *genuine and assumable*; but the Senate well recollects, that the end for which it was intended was visible, the 30th of June was the last day of subscription, the certificates of *John Oldden* were subscribed by the Comptroller-General as late as the 9th of July, altering the date to hit the purposes, when the laws would not warrant the redemption of any; his omission of certifying *genuine and assumable* in his own case is a proof of more increased dexterity, than any excuse can be a defence.

I trust the first article of impeachment is fully supported, the motives which render these transactions so culpable, and the inference of these motives shall be considered hereafter.

THE SECOND ARTICLE.

In the preceding article of impeachment a charge of practices indirectly, and consequently pernicious to *Pennsylvania* have been comprised; in this we trace the same passion in direct opposition with her laws, and operating most immediately and unequivocally to her disadvantage.

Here again the prosecution commences with an averment of a fact for which we only pray the candid investigation of the law: It is averred that New-Loans were not specified and could not be contemplated as objects of redemption; that they were not specified requires only a perusal of the Act.

(The second section of the Act of 10th April 1792 was then read.)

That the New-Loan certificates could not be contemplated by any fair unprejudiced and unbiaffed mind is not difficult to be established; that they are not mentioned in the second section is apparent; as they were not included in the second section, the sixth section ought not to be pressed into their service as an auxiliary.

The loans on the part of the United States were directed to be opened on the first of October 1790, and to continue open until the 30th September 1791.

Pennsylvania was then possessed of a large portion of United States' debt, which the Treasurer was directed to subscribe by the 30th March 1791: It was believed that *Pennsylvania* would be a creditor of the Union.

(Mr. Rawle glanced at the testimony of Mr. Donaldson, which see last paragraph, page 292,) this has been stated by Mr. Gibson, (see page 334.)

It was doubted whether the balance due to this commonwealth would be punctually paid, as the subscription of every dollar of her own debt was an assumption of the payment of it by the United States, it was considered as her interest that the State creditors should subscribe. It was contemplated that she would otherwise remain encumbered with her own claims, at the same time that she might be an hopeless creditor of the

Union; but as the manner of funding the State debt would not have yielded to the State creditor a benefit commensurate with that ensuing to the State, as she was relieved from the payment of 6 per cents. by a measure which yielded to them only 4 per cent.; an Act was passed the 9th of April 1791 inviting her own creditors to accede to the United States' loan by engaging to compensate them for their loss. This Act had its effect, subscriptions took place to the amount of £. 252,697 : And purpart certificates were issued to the amount of £. 136,543.

In December 1791 the Legislature beheld with satisfaction the wealth and prosperity of the State, differing from the author of the plan of finance, she passed the Act of the 10th of April 1792—the State being then only encumbered with the interest on funded and unfunded depreciation debt, funded debt, dollar money and purparts.

Far from thinking a public debt, attended with sufficient advantages, either necessary to procure her importance in the Union, or to attach her own citizens to her interests.

To counterbalance these inconveniences, they determined to make use of the means to relieve her incumbrances at once, they resolved to sell so much of her 3 per cent. stock at 12 shillings in the pound, or £. 60 per cent. as would discharge all her debts : It was proposed by the Legislature fairly to purchase the subscriptions of those of her own State creditors mentioned in the second article who would subscribe; the law itself justifies this construction, and manifestly negatives the construction attempted to be given to the sixth section. In the law, as it now stands without any alteration, the sixth section is a proviso to the second section, this we have in the testimony of Mr. *Gallatin* (see page 295-6-7-8.) The fifth section directs the payment by the State-Treasurer on or before the first of July same year; the 6th section goes on to state that they shall be entitled to the nominal value from the Treasurer upon

upon condition that they shall subscribe to the loan, and transfer to the use of the State-Treasurer.

Now, no other law exists authorizing the State-Treasurer to pay the nominal value, and no other mode of effectuating the payment but by warrants drawn by the Governor, payable out of this fund: The Governor derives his authority from the fifth section in reference to the second; but no additional clause, no authority is given to draw in execution of the sixth.

It follows therefore that the intention was, that, if the loan re-opened, the second section was only to be executed as the parties should comply with the sixth section.

The seventh section more clearly exhibits the views of the Legislature; it requires the holders of every certificate intended to be redeemed to apply before the first of July, and after that time all interest shall cease, but if no sale, nor notification, interest shall continue: Now it is notorious that New-Loans did not bear an interest of 6 per cent.; it is therefore consequently obvious they were not included in this provision: Yet this is expressly extended to all the certificates intended to be redeemed; it follows New-Loans were not intended to be redeemed. If a member of the Legislature was to be asked by one of his constituents, "What did you mean by this Act?" the answer is obvious, "Read the seventh section."

They contend that the sixth is a separate and absolute provision; if so, nothing is more true, than what proves too much, proves nothing at all.

Read it in this point of view. (The sixth section then read.) What is its effect? An engagement that they will pay to every holder of State certificates from *New-Hampshire to Georgia* the nominal value of his certificates!

No peculiar mention of the *State creditors of Pennsylvania*!

A construction liable and subject to such observations ought to be rejected, and must be laid aside.

The sixth section don't controul to the exclusion of, but is a condition annexed to the second section.

Here it is difficult to reconcile the conduct and knowledge of the Comptroller-General with Mr. *Gallatin's* communication, (see his testimony, page 295, &c.) as Comptroller-General it forms no matter of exculpation that he was able to catch the State in an error, altho' a third person might take advantage, Mr. *Nicholson*, as Comptroller-General ought not to catch her in this error in which she did not intend to fall.

THE THIRD ARTICLE.

This article consists of four parts or members.

1. Mr. *Nicholson* did not consult the Register-General.
2. Nor commune with the Governor.
3. Nor discriminate in his certification what certificates were subscribable.
4. Nor did the Comptroller-General certify in his certification, what certificates were redeemable.

Three of these charges are proved, and if one is proved, that is sufficient to convict the defendant. (Mr. *Rawle* read the letter from the Secretary of the commonwealth to the Comptroller and Register-General, page 232.)

In consequence of this letter the two officers joined in a report to the Governor, which included the estimate approved by the Governor; which estimate is now lost; this estimate (now supposed as aforesaid to be lost) embraced all the debts of the commonwealth which were to be redeemed, not a partial estimate of them but every species which were to be redeemed. (Mr. *Rawle* then read the following letters.)

" SIR,

April 16, 1792.

" CONFORMABLY to your desire expressed in the Secretary's letter of the thirteenth instant we have considered the Act therein referred to, and as there appears to be no discretionary power to suspend the operation of the Act and the redemption of the debt by the first
of

of July next except for the want of purchasers of 3 per cent. stock at twelve shillings per pound at least, and as the notification to the creditors to receive payment must take place by the first of May next in case of such operation, it seems necessary between this and that time to try the market in order to form a determination from the offers that may be made: under this impression, we would beg leave to propose that we should forthwith invite proposals to such amount as purchasers may chuse to offer on or before the 25th inst. payable and deliverable by the 30th April instant.

“ The result of these offers and the extent of them will enable your excellency to judge whether a sufficient sum and price may be relied on by the first of July next to warrant a call on the creditors to apply for payment.

JOHN NICHOLSON,
JOHN DONNALDSON.”

His excellency THOMAS MIFFLIN, Esq.
Governor of *Pennsylvania*.

“ *Philadelphia*, 27th April, 1792.

“ GENTLEMEN,

“ IT is evident that the Legislature intended to make a general settlement with the creditors of the State upon the principles expressed in the Act of the 10th instant, and consequently a partial sale of stock, or a partial commutation of State debt for stock, will not justify my issuing a notification, which, by the terms of the law, must be addressed indiscriminately to all the holders of the specified certificates and bills of credit, requiring them to comply with the conditions of the redemption. But if the offers to purchase stock and to commute the debt at the rate prescribed, shall, together, be commensurate to the aggregate amount of the certificates and bills of credit, which are to be redeemed, I conceive that, without violating the spirit of the Act of Assembly, the object of the arrangement may

may be attained as well in this way as by an entire sale of stock.

“ You will be pleased, therefore, to extend the period for receiving proposals, and to accept all that may be made in either of these forms, until the requisite sum is obtained. But in the case of a commutation, there must be an actual deposit of the State debt; in the case of a purchase the cash must be paid, or secured to be paid beyond the possibility of disappointment; and in both cases, the period of executing the contract must be referred to the time which the notification shall limit. I am, &c.

THOMAS MIFFLIN.”

To the *Comptroller-General* and
Register-General of Pennsylvania.

(Mr. Rawle then read the letter signed *John Nicholson*, which ought to have been signed by Mr. Donaldson also, page 224, he then added:)

Accordingly the Comptroller and Register-General joined in a report already read, dated 30th April 1792, (see page 225-6.) This letter encloses the names of the purchasers for the stock amounting to the sum of 986,000 dollars. The former estimate is said to be lost; this document was general, not confined to the second section as they contend. Mr. Dallas's testimony will vouch for this, (see it page 231, &c.) who declared no verbal communication had passed between him and the Comptroller or Register-General.

But it is said that no verbal communication was necessary, except when differences of opinion between the Comptroller and Register-General had occurred, and when they differed in opinion; How? When only one officer knew the transaction.

The Comptroller-General and Register-General could never disagree because the Comptroller-General had not communicated with the Register-General.

The testimony of Mr. Dallas and Mr. Donaldson confirm that no New-Loans were included in the estimate
formerly

formerly rendered, and now supposed to be lost, nor no unfunded depreciation, the second estimate is a proof of this, which is declared by the Register-General and Secretary of the Commonwealth to be substantially the same with that which was lost.

(Mr. Rawle then read the following letter.)

" Secretary's office, Philadelphia, 3 May, 1792.

" GENTLEMEN,

" IN consequence of the doubt, which you have suggested, I am directed by the Governor to inform you, that when he assented to the idea of the State debts being received on the sales of stock, it was upon this principle, that it should be considered and estimated as cash, at its nominal value; beyond which nominal value, and the rates in particular cases prescribed by the Act of Assembly, he is not authorised, upon the redemption, nor, consequently, through the medium of a commutation to liquidate the demands upon the public.

" A fund commensurate to the whole amount of the debt to be redeemed, must be established, before the Governor can issue his notification; and it is certainly immaterial, whether that fund is satisfied by specie payments, or by deposits as cash, in the public securities, for which the specie is to be raised: but the Governor conceives, that it would be contrary to the spirit of the law, to an impartial distribution of justice, and to the public interest, were the proposals to be accepted, so that the payments by way of commutation should be considered as cash, in order to entitle the parties to a transfer of the three per cent. stock, and also as a deposit in order to entitle them to interest until the expiration of the time, which the notice shall limit for the general redemption.

" By an arrangement of this nature, a discrimination is not only introduced between the purchasers of the stock for cash, and those who purchase with State debt, to the great benefit of the latter class; but it will likewise

wife operate with similar inequality in relation to all those State creditors, who cannot have the opportunity of settling their claims by way of commutation; the State, too, will not only lose the current interest on the 3 per cent. stock; but be precluded from the advantage of an immediate settlement with such of her creditors as shall be disposed to anticipate the period, for which the notification must issue.

Such have uniformly been the Governor's sentiments; but, if by any means they have been misunderstood, he would rather relinquish all advantage from the present proposals than suffer any cause of complaint to exist: He requests, therefore, that you will be pleased to confer with the parties, on the subject; and to inform them, that they may now make their election, either to abide by their proposals upon the terms which I have stated, or to withdraw them. I am, &c.

A. J. DALLAS."

*To the Comptroller-General and
Register-General of Pennsylvania.*

This last letter shews no particular sale in contemplation, the sale of stock was to be commensurate to the whole amount of debt to be redeemed.

(Mr. Rawle then quoted the Act of Assembly of the 4th April 1792, page 218, which directs the manner of settling the public accounts;) by this it is manifest that it was the duty of the Comptroller-General to have informed the Register-General, it was their joint duty to draw, and certify the fund, that the Governor might draw his warrant on the State-Treasurer with propriety. Nay, they were to certify jointly: No excuse can be brought in justification of his conduct for keeping the Governor ignorant of the transaction. This is a new species of defence set up by the counsel for the Comptroller-General. I am willing to relinquish such parts of the members of the present article, as respect any matter about castings and calculations, and dates of interest on the face of the abstracts: but the
fourth

fourth member, that *the Comptroller-General did not certify in his certification to the Governor what certificates were redeemable*, is a serious charge. Some debts were to be redeemed by the Act of the 10th of April 1792—*What State debts?* Why! only those debts which were included in the estimate which had been furnished by the two officers, the Comptroller and Register-General.—Here it may be necessary to advert to his own name being used;—I answer, when the *measure* is concealed, no matter about the *man*.

THE FOURTH ARTICLE.

This article charges the Comptroller-General with a breach of the Constitution, here no shelter can be found in the ambiguity or contradiction of the law, it is a direct violation of a single clause in a plain and explicit instrument; accordingly the endeavour is not to oppose but to escape the charge.

Astonishing to hear, that a warrant expressly to be paid out of a fund created by the Act of the 10th April 1792, and actually so paid by the Treasurer, and so reported to the Legislature by the Governor—is to be protected from reprehension by quartering it on another fund previously appropriated by law to other objects, and altho' his warrants are expressly drawn and paid out of *the fund* provided by the Act of 10th April 1792, they were drawn out of the fund established by the Act of the 7th April 1791—and not out of the fund provided by the Act of 10th April 1792.

By the Act of the 26th March 1789, £.10,000 were set apart for claims and improvements; that this has always been considered a peculiar fund, and appropriated to those cases which did not belong to any particular class, and as such I shall shew the sentiments of the Comptroller-General upon it, in an official statement under his own hand.

(Mr. Rawle read a part of the Comptroller's report, page 386, Minutes December 11, 1790, as follows, to wit:)

“ There is another species of expence called claims, which cannot properly be arranged under the debts of the State, and which is certain in its amount, as it depends on the grants of the Legislature at the time, and not on accounts adjusted upon fixed principles. The sum of £. 5,000 annually is appropriated by Act of March 26th and 28th September 1789, and is constituted as a fund for this purpose. It may be worthy the consideration of the Legislature, whether such a fund is not likely to beget many improper applications, and whether, after the State hath, by an Act of limitation, barred even unsettled claims which would have been legal, such an invitation should continue to be held out.”

These claims (the defendant observed) were likely to beget “ improper applications,” nothing in this provision relative to the Act of April 1791: No New-Loans could be redeemed under that law, nor any claim on that fund.

But an unexpected effort is made to defend, which requires further consideration, the charge is, that he caused money to be drawn from the Treasury without a previous appropriation by law.

Not a single instance can be produced which will shew, that where a warrant has been drawn on a fund, to which it was not applicable, the same should be paid out of the twelfth appropriation of the 7th April 1791. (Some warrants were then produced, and read by Mr. Rawle, to establish his position, contained in the last sentence.)

Question by Mr. Bingham to Mr. Rawle. Do you say, that the fund included in the Act of the 26th March 1789 is embraced in the Act of April 1791?

Ans. Yes—as far as the 12th appropriation extends.

Ques. by the same. Is the Act of March 1789 a part of the Act of April 1791?

Ans. No. By the Act of the 7th April 1791 all the revenues of the State were collected into one mass, and formed an aggregate fund towards paying the debts
and

and obligations of the commonwealth, and finally to pay all warrants drawn for claims and improvements.

It was with great propriety the warrant in favour of Mr. *Rittenhouse* of the 27th September 1791 was paid out of the fund for claims and improvements.

That warrants were drawn without a specification of the funds, in the case of Dr. *Hutchinson* and others after verdicts in the Supreme Court: Was this agreeable to law? In the second section of the Act of the 4th April 1792 the duty of the Comptroller and Register are defined, where it is enacted that the balance and fund should be certified by them to the Governor, and a warrant should issue accordingly.

Can his conduct on this occasion be justified? Can this transaction be pressed, as a defence, into the service of the Comptroller-General?

(Mr. *Lewis* interrupted Mr. *Rawle* at this time, and desired him to produce the warrants. Whereupon the warrant No. 14 for unfunded depreciation debt, was read, and shewn that it was not certified to be payable *out of the fund* of the 10th April 1792, but that it was payable *per Act* of the 10th April 1792, and the following letter.)

“SIR,

February 13, 1793.

“WE have the honor to inclose a statement of the certificates granted for unfunded depreciation debt, agreeably to Act of 4th April 1792, which have been issued since the first January 1793, and are, with, &c.

JOHN NICHOLSON,
JOHN DONNALDSON.”

Hon. GERARDUS WYNKOOP, Esq.

Speaker of the House of Representatives
of *Pennsylvania*.

 The statement consisted of six certificates amounting in the whole to ten thousand five hundred and seventy-eight dollars and ten cents.

By these it was evident unfunded depreciation was not included in the estimate.

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The Governor did not know that unfunded depreciation were included, nor could it appear to him that there were any others but those directed to be redeemed by the first estimate and expressly connected with it.

Had the conduct of the Comptroller-General on these occasions been otherwise, no impeachment would ever have lain against him.

I will reduce the remaining three articles into two as concise as possible, the fifth and sixth I will consider together as the same evidence applies to both.

(Mr. *Rawle* read the fifth and sixth articles of impeachment.)

The fifth states in general terms the final objects of the labours to which the preceding articles refer.

That the plan of finance (which see page 280) was not laid for others, when only £.20,000 was estimated to be out, that he purchased to so great an amount, it must be acknowledged that he was indutrious. (Mr. *Rawle* explained the business respecting the certificate of Dr. *Hutchinson* and others, as not connected with this business.) With regard to the sixth article of impeachment that he subscribed for his own use the certificates received to be exchanged.

It is surprizing that such a quantum of evidence hath been procured. His counsel do not deny the charge, but the inference, and contend to justify the transaction.

That the Comptroller-General led the way is apparent; 1. Mr. *Oldden* a principal broker is at a loss to divine what use the defendant intended them for. 2. Mr. *Boggs* certifies New-Loans rose in price, and unable to know what for. But Messrs. *Evans*, *Hale* and *Stroud* have been produced to prove that the New-Loan certificates have been taken back, after they were lodged for re-exchange. The charge is, that the Comptroller-General made proposals to purchase, and did actually purchase from persons bringing certificates to his office to be re-exchanged. Is this an answer to the charge? The question is not whether on an alteration of their
minds,

minds, they took back their certificates after having lodged them with him.

But the charge is, that a steward of the public revenue is accused of having prevented an exchange which the party was desirous to make, and which it was his duty to accelerate, by which the State suffered a considerable loss : And the defence is that in other instances wholly indifferent to the public, *he*, and not another officer assented to the parties receiving back, at their own request their own certificates for private purposes.

The last article is certainly of too serious and too plain a nature to be viewed with indifference. We have Mr. *McConnell's* testimony that he sold that certificate to Mr. *McClenachan*; Mr. *McClenachan's* testimony proves that he never sold any certificates nor had any private dealings with the Comptroller-General in his life, except the advance of some indents. That he delivered all the certificates which he had to Mr. *Nicholson*; that he is of imperfect memory that this certificate was of the number; that on the 15th September 1790 he drew interest on this certificate. As Mr. *McClenachan* never commuted with him, nor had any other dealings with the Comptroller, he is put to prove how he came by this suspicious certificate.

The Comptroller-General brings his books of exchanges, dates, numbers and sums are not apparent on the face of them.

Twenty-six of these certificates united without dates, &c. make up £.26,000 which is No. 183; forty-five certificates make up £.27,000, No. 184.

Lord *Mansfield* observes, all evidence (*Couper*, 65,) is to be weighed according to what one party can produce, and is in the power of the other to contradict.

We are not to make testimony but to find it; if any imputation is thrown on *Blair McClenachan*, we did not select him, but his testimony should however have this effect, that it deserves a better answer than hath been yet given to it by the Comptroller-General.

This

This impeachment hath not been precipitated, it is now almost twelve months since it commenced; the Comptroller-General has had full leisure for the collection of official documents necessary for him: Having already taken notice of a great part of his defence, it only remains to notice two circumstances adduced by his counsel.

1. His innocence is to be inferred from his open and avowed sentiments at former periods relative to the nature of New-Loans; (Mr. *Rawle* then adverted to the Comptroller's letter, December 24, 1791, page 220-1-2, his letter to Mr. *Hamilton*, page 278, and his letter to Mr. *Mifflin*, page 223-4.)

The unvaried tenor of opinion is certainly evidence of its sincerity—but when we find the same man, at or near the same period of time, and under the same circumstances delivering opinions diametrically opposite, we are led to enquire which of the two occasions required the most serious reflection.

But in the official document, 30th November, 1791, all the claims against the commonwealth are mentioned and stated; New-Loans are omitted, yet they are not altogether too inferior objects of notice, as £. 600 arrearages of interest on them are mentioned.

It will not be pretended that he intended to mislead the Legislature or the Governor; and it will not be pretended that the nature of the statement precluded the mention of the principal of the New-Loans: For, 1. It is an account of "claims," and he professes to have always considered this as a claim. 2. The principal of other claims was noticed by him, such as funded and unfunded depreciation debt, pensions, &c.

Yet while on this strong ground, this important period of the 10th April 1792, it does not in all his correspondence appear that practical views, his avowed opinion, his mortifying and inlaying of New-Loans into the composition of the fund for redeeming State debts, so as to make all appear of one piece was ever communicated to any one; no intimation that the redemption
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of New-Loans was practicable altho' that was the time to have avowed the sentiment.

This was however (as Mr. *Tilghman* says) authorised by the secret and avowed objects of speculation.

2. That some of the Acts in question, being lawful to others were lawful to the Comptroller-General.

This is important and attacks the basis of some of the articles of impeachment. I consider it as applicable to his purchases of *Oldden*, and *Biddle*; his avowedly pursuing what he professed to suppose the literal construction of the law of April 10, 1792, in opposition to what he knew to be the meaning of the Legislature.

The interest of the commonwealth, the happiness and success of a republic depend on the destruction of this unworthy principle.

It is an axiom, necessary for our prosperity, and almost inseparable from our existence, that a public officer should have no interest opposed to that of the public: Perverting public offices to private emolument was one of the principal causes of the downfall of one of the greatest commonwealths in the world.

In this grand national view, I will not descend to the jealous superintendence of courts of chancery over executors, guardians and trustees.

You, who are here collected, and delegated to decide this national enquiry, will never forget, that solemn obligation are derived from important trusts; and that whoever stipulates faithfully to serve the public, stipulates to renounce every personal advantage incompatible with the public interest.

It is therefore, for a breach of this engagement he is accused—an offence which in all times has been denounced as requiring adequate punishment. 2. *Wood-deson*, 602.

I fear no contradiction in saying, that had *John Nicholson* in 1782, when about to take the oath "faithfully to serve the commonwealth," and to execute the office of Comptroller-General, declared his construction of it to be, that he was at liberty to pursue his opinion
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of the letter of the law in opposition to what he knew to be the intention of the Legislature.—That he would claim the privilege of private men to prefer his own interest to that of the public, and that he would avail himself of his official opportunities for so doing—he would be rejected with disgust and without hesitation. If this conduct would be wrong in 1782, it cannot be right in 1792. With these observations I submit the case to the consideration of the Senate.

In the minutes of the House of Representatives the following entry is recorded :

“ In conformity to the resolutions of the 25th February last, the House resolved itself into a committee of the whole, in order to attend the trial of *John Nicholson*, Comptroller-General.

“ The Speaker quitted the chair and Mr. *Montgomery* was placed therein.

“ The committee then proceeded to the Senate-chamber for the purpose aforesaid.

“ After some time,

“ The committee of the whole returned to their own chamber.

“ The Chairman left the chair and the Speaker resumed it.

“ The Chairman then reported that the committee of the whole had attended at the trial of the articles of impeachment against *John Nicholson*, Comptroller-General.

“ The committee appointed to manage the trial on the articles of impeachment of the House of Representatives against *John Nicholson*, Comptroller-General, reported further progress.”

Eleventh day of the trial.

T U E S D A Y, MARCH II.

THE Court being called, &c. as usual.

MR. HIGGINSON.

*Mr. Speaker, and
Gentlemen of the Senate,*

THE Senate of the commonwealth of *Pennsylvania* is called upon by the Constitution to execute one of their most important functions, that is, A TRIAL BY IMPEACHMENT.

The House of Representatives being the most popular branch have exercised their jurisdiction in preferring the charges against *John Nicholson*, the Comptroller-General: This important right devolves upon you, whose part is the more difficult as you have to decide and are set as judges over this individual, your tribunal is the greatest in the land; being thus constituted, you have to reason with capacity; the chain is composed of mixed business, habits of intimacy, and principles of confidence between the two branches, and sympathy for each other, a mere suggestion of the danger is sufficient to destroy the existence of the danger.

Having premised this hint to you, his judges, permit me to say that the defendant has every thing that is valuable at stake, his reputation is at issue by this accusation; if rumour spread through every corner of the state, if the public opinion, envenomed by prejudice, if reports of guilt and torrents of prejudice, roused and fomented by malice, and fostered by envy, are sufficient to condemn a man, the defendant is already brought to judgment.

Yet the impartiality of the tribunal will secure the

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officer from condemnation on any other ground than that of a fair trial according to the evidence.

We have heard great panegyricks bestowed on impeachment trials in *England*, but history affords but few examples of such trials being any other than prosecutions, oppressive and violent, and ending in corrupt decisions.

The present trial, I hope, will be different in management and decision.

The articles of impeachment are divisible into two classes.

The 1st is subdivisible into four classes.

The 2d is of a different nature and scope, and consequently worthy of different consideration.

Upon this, two points arise.

1st. Whether our construction hath been right or wrong.

2dly. If not conformable to law, whether it had not been our honest faith and good opinion.

The first, If New-Loan certificates were subscribable to the loan opened under the Act of the general government.

2d. If redeemable.

The first of these depends on the Acts of Congress. (Mr. Higginson then read the Act of Congress of the 4th August 1790, section 13th and the proviso.)

By this section and proviso two things are requisite.

1st. That they should be issued before the first of January 1790,

2dly. That they should be issued for SERVICES or SUPPLIES.

With regard to the first of these qualities, it is evident they were issued by *Pennsylvania* before the 1st January 1790. And it is equally evident as to the second. The gentleman who preceded me did not go on to say, that the New-Loan holders had no other debtor to look to but the state of *Pennsylvania*. They were issued for Continental certificates, strange! He did not recognize this particular! Strange that a transfer of the debt should alter the consideration! The transfer was made
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for a valuable consideration.—The law which they say abrogated them was passed before the 4th day of August 1790. The *North-Carolina* certificates excepted, being issued in 1786 corruptly, for no valuable consideration, is a strong argument in our favour; Congress prohibited the assumption of these *North-Carolina* certificates, and enacted that they should not receive the benefit of this Act, because they were issued without any valuable consideration; this exception makes the rule more strong; and the New-Loans are much more included in that general provision, being issued by government, and having the recognition of public authority, being exchanged for Continental certificates which issued for a *bona fide* consideration.

Two objections may be raised against this argument. 1. That the certificates of *North-Carolina* were in their original form issued without that exception, and that New-Loan certificates exchanged for Continental ones were not recognized by the general government, nor by their officers, and that they could not be specifically included in the 13th section: But are they not expressly mentioned in the 18th section?

2d. By concluding from the generality of the rule, that New-Loans could not be included: But as Mr. Gallatin, a man of much ingenuity, in the case of his contested election, quoting the words of the 4th article of the confederation, “paupers, vagabonds and fugitives from justice, excepted,” argued that these were included, if the article had been penned without these words. The arguments are stronger here than if they had all stood without the exception. But Congress to place it out of all doubt and controversy, enacted a clause to except the certificates of *North-Carolina* from being received on the loan. There are no reasons which could apply, but would have applied to the necessity of the New-Loans being expressly excepted from the loan of the Union, if they had so designed.

At all events the exception whether sound or unfounded will be perfectly immaterial, when we consider
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our law of the 27th March 1789, which passed after the adoption of the Federal Constitution, if it meant to exclude them from provision, why not make a literal exception to them?

Before I come to consider the Act which erects New-Loans into state debts, permit me to observe, that the Act which authorises the payment of a demand is in fact an appropriation by law previous to the grant of the warrant, and is constitutionally payable out of monies not otherwise specifically and previously appropriated.

One reason is, it would always promote the good faith and interest of the state, and it would never commit it.

The money was to have been drawn from the Treasury by the warrant of the Governor; if the certificate was in the usual form, if it was such as the officers would and ought to have made, believing it to be just and right, the officer is not to answer, if there was any thing untrue in the certificate, it must be shewn; if any marks of delusion, it must be pointed out. The Treasurer paid the draft, if there had not been an appropriated fund the Governor ought not draw—the Treasurer ought not to pay.

The sum was certified by the Comptroller-General, the same passed through the office of the Register-General before it was handed to the Governor.

If the certificates are not redeemable by the Act of the 10th April 1792, the charge is right, if they are redeemable the charge is not true; if not literally true, the charge must fall to the ground: Nay, something more is necessary to make it criminal, than to say true, or untrue.

One criminal point is *an omission*, but it must be shewn; that it was the officer's duty to discriminate, and it is their business to shew that it was his positive duty to make it known to the other officers.

But if the officer did what he thought right, he is indisputably innocent.

Much

Much has been said about the liberality and justice of the Legislature, respecting the Act of 1786, yet the measure grew out of self-preservation, and the interest of government.

The State at this time had to choose the least of two evils. *Pennsylvania* was punctual in paying her quota, other States were deficient; Congress was obliged then to issue indents for interest which depreciated, persons from other States might buy up these indents to the loss of *Pennsylvania* and the advantage of the delinquent States, and yet the payment thro' the State Loan-office was disagreeable to Congress. The State of *Pennsylvania* was therefore under the necessity of passing the law of 1786 in order to shun the worst of two evils. Her quota was assessed; and she paid it. The motives were in order to confine her own payment to her own citizens, and the money to circulate in her own territory.

Thus it was agreed on all hands in the Legislature at that time, that *Pennsylvania* should assume the debt to her own citizens, the only difference consisted in the mode: This is fully proven by referring to the plan of finance then brought forward in opposition to that which was adopted, both equally support our argument.

(Mr. Higginson read the following parts of the plans of Finance, see Minutes of Assembly, 22d December, 1785, pages 117, 124, and 126.)

“XIII. Thus the foregoing balances due to the United States may readily be discharged. But there is something more that claims the attention of *Pennsylvania*.

“According to the estimation of Congress, the sum of 4,834,279 $\frac{1}{2}$ dollars, will be necessary to discharge the interest on the domestic debt of the United States till the end of the year 1784; and by the resolutions of Congress of the 27th of September, 1785, facilities or interest certificates are directed to be issued for the interest due until the 1st of January, 1785, consequently facilities will be issued nearly to the amount aforesaid.

“Although this state hath discharged the interest of
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the debts of the United States, nearly to the amount of the quota of *Pennsylvania*, in the sum requisite to discharge the interest of the whole domestic debt to the said period ; and, although this state hath by the Land-Office redeemed above £. 220,000 of the principal of the domestic debt due by the United States to the citizens of *Pennsylvania*, and yet continues to redeem the same by the means aforesaid ; nevertheless there remains a large portion of the whole of said debt yet due to the citizens of *Pennsylvania*, and there are large arrears of interest yet unpaid upon the principal sums so due to them—This demonstrates the delinquency of some of the other states ; a delinquency which ought not to be permitted, for (unless measures be taken to prevent it) they would even profit by such delinquency, and the creditors of *Pennsylvania* suffer on account of their faithful and strenuous exertions. The great quantity of facilities which would be paid to the citizens of *Pennsylvania* would cause them to depreciate, notwithstanding the provision made by Congress to prevent it ; so that the creditors in *Pennsylvania* would not have the value intended them, and to which they are justly entitled—And this depreciation would enable citizens of other states to procure them in this state at a discount, and so to pay off their proportion of the Continental requisitions with certificates obtained at less than specie value. For remedy whereof it is proposed,

“ That the possessors of all certificates of debts due by the United States to citizens of this state, the interest of which were made payable at the continental loan-office by the Act of March 16th, 1785, shall have it at their option to receive from the Comptroller-General of the state, a certificate for a like sum in lieu thereof, bearing interest from the same date ; and that the faith of the state be pledged for the redemption of all such certificates so issued.

“ And that such Loan-Office certificates, entitled as aforesaid, as have been granted for continental money, shall be settled and liquidated in specie by the said
Comptroller-

Comptroller-General, agreeably to the scale provided for that purpose by Act of Congress of the 28th of June, 1780.

“ And whereas, according to the said Act of Congress, the possessors of certificates for money loaned before the 1st day of March, 1778, are entitled to an interest of 6 per cent. per annum in specie upon the nominal sum expressed in the certificates, until the final redemption of the principal; that the said Comptroller-General shall also certify said nominal sum on the back of every certificate issued by him for Loan-office certificates of the aforesaid description; to the end that the said possessors may receive the same justice from this state as hath been promised them by the United States.”

The other plan contains as follows.

“ III. As the demands under the 11th and 12th articles have not been duly liquidated, the precise amount cannot be ascertained: But it is conceived that the excess abovementioned, together with the sales of lands, formerly pledged for the redemption of depreciation certificates, and the arrearages of militia fines, supposed to be about £.31,500 would be more than sufficient to pay them; and that probably these sources would afford the means of satisfying claimants as fast as their claims could be adjusted. The balance should be carried to the aggregate fund.

“ IV. In order to provide for the sum contained in the 13th and 14th articles, it is proposed that a subscription be opened at the Bank for a loan of £.2,000,000 to the State, the subscription to be kept open till the first day of April next. The subscribers to pay one-fourth of the subscription down, one-fourth on the first Monday in April, one-fourth on the first Monday in July, and the remainder on the first Monday in October. The payments to be in Loan-office certificates, or other certificates of debts due by the United States to citizens of *Pennsylvania*, on which the interest is by law now payable in *Pennsylvania*, or in such depreciation certificates

certificates as are now entitled to receive interest from the excise, or in specie. The interest to be payable from the first day of April, at the Bank, half-yearly. The first half year's interest to be paid on the first Monday in October, the second on the first Monday in April, 1787, and so on, until the final payment of the principal. The late proprietors to be entitled to the above-mentioned sum of £.225,000 of the loan, or to adhere to their rights under the Act of November 1779, at their option.

“ The provision proposed for payment of the interest, and eventual payment of the principal, is as follows :

“ I. A tax on imports.

“ Under this head it is to be observed, that as the present plan is calculated to forward and not obstruct the views of the United States, the duties proposed will be the lowest stated in their recommendation. And when their system shall be generally adopted, the duties now proposed may be relinquished, and an equivalent sum be paid to the Bank from the duties raised for payment of interest on the debt of the United States ; and of which a considerable part will be payable to the State, in consequence of their receiving continental certificates for a loan made by the State.”

“ *Note*, It is not improbable that the funds will be insufficient for the purposes to which they are appropriated. The disturbances at *Wyoming* may perhaps call for a considerable sum, which is not comprehended in the estimate.

“ VI. The amount due on the requisitions of Congress is (according to the 16th article) £.91,915 : 17 : 6 which is payable by their Act on the 1st day of May next. From this sum must be taken, 1st. The interest which will at that time be due to *Pennsylvania* from the United States on Continental certificates received at the Land-office and in taxes. 2d. The monies paid and payable before the first of May to pensioners disabled in the service. These two articles will probably amount

amount to about £.52,000 and will of course reduce the balance to about £.40,000.

“ But as it is proposed to receive on the abovementioned loan to the State, Continental certificates to the amount both of the principal and the interest which may be due on them, the interest will form a considerable part of the sum. The total is estimated at £.1,775,000 and therefore that part which consists of interest must greatly exceed the above balance of £.40,000.

“ *Note*, The possessors of Loan-office certificates bearing date before the 1st day of March, 1778, are entitled (by resolutions of Congress) to receive 6 per cent. on the sum specified in their certificates, altho’ their real value (by the Continental scale of depreciation) is considerably less than the nominal sum. Hence it follows that the calculation (in the 13th article) of a principal sum due, which is made according to the amount of interest actually paid by the Loan-officer, is erroneous. But since the interest due on Continental certificates will (as just mentioned) be an addition to the principal, it is probable that the excess of one will balance the deficiency of the other.

“ By receiving in the proposed loan (at their real value) those certificates which bear an interest of 6 per cent. on more than their real value the State will gain the difference between the interest on such real value, and the interest now payable by the United States, and the present holders of the certificates will have no reason to complain, because they may (at their option) either lend them to the State on the terms held out, or have recourse to the United States on the terms of their resolutions.

“ On the future requisitions of Congress, whenever they can be proportioned (either by the rule laid down in the articles of confederation, or by the rule lately recommended to the States) it will be expedient to raise an account of quotas with the United States, passing to their credit the total sum payable by *Pennsylvania*, and to their debit the total sum which *Pennsylvania* has

paid. The balance of this account (being the excess or deficiency of payments) will be carried forward, so as eventually to be liquidated in the annual demands of Congress, and annual payments of the State. Since therefore a considerable sum will (in the event) be payable to the United States every year (however the balance may now stand) it will be expedient to continue the present annual tax on property, and carry the proceeds to the aggregate fund, which will receive.——”

It is true this last provision was not carried into effect, owing altogether to circumstances and motives of state policy.

It may then be said, that it is contended the law of March 1786 was temporary. True, this idea is in the preamble of the Act of 1789, but it is not presumed that it can be construed by the *ex post facto* explanation of the same Act, neither intended nor mentioned, nor does the Act contain a single idea of a temporary provision.

Read this Act according to the minutes already read, it will be easily seen that the New-Loans are an existing state debt. Read it you will see a better rule of construction than by speeches, resolutions or reports of committees. (The 1st and 2d sections were then read.) Now, Sir, let the first and second sections of this law be taken in any point of view, I contend the New-Loans are not destroyed as a debt, but at most only a suspension of payment, and a provision for completing the payment of interest for four years.

Or, a modification as to payment: To those who did not chuse to embrace the invitation, there is an offer, in the second section. It was only as a suspension, and to those who did not chuse to embrace it, it was only a modification of payment.

Then follows the provision of the option held out to New-Loan holders; thus the Act operates either as a suspension, or a modification; in this, two points are to be considered, enough of the Act of March 1786 is left to constitute a debt.

2. Repealing a law is not repealing what was done under it.

Of the Act of March 1786 enough is unrepealed to make the certificates neither null nor void.

For 1. In the 8th section the interest is directed to be paid : 2. In the 11th section they are made receivable in the Land-Office.

Both are only mere forms of words, for the Legislature could not make them null and void if they intended so to do ; to do that, and to exclude them from the loan they must be rejected by the Legislature of the Union as the certificates of *North-Carolina* heretofore adverted to.

The question may be reduced to this simple position, that as the gentleman yesterday said respecting the existence of a legislative power in *Pennsylvania*, a position indisputable ; so likewise in this instance, the fundamental principles of Nature, may as well be set bounds to as to the principles of natural justice ; in either case to become a legislative act, it might have the form of a law, but not the force of one : There are moral impossibilities as well as natural ones, and these exist with Legislatures.

A Legislature therefore can no more effectually annihilate any rights, or enact away its own obligations, than it can enact that a body shall decrease in gravitation in proportion as it descends to the earth.

Thus much I have said to enforce that rule of construction that if a law can receive any possible construction, that will avoid so serious an imputation as the violation of public faith, and will comport with justice, such construction we are bound to put upon it. What a government cannot of right do, we surely should not presume it meant to do ; unless the Act was planned for such, unequivocal in its meaning, and unsusceptible of any other construction.

In the third section the words *many* and *so much* are relative terms, and imply that some would not be willing to exchange or to take back the Continental certificates.

I observe

I observe that the framers of that Act, in order entirely to deprive the holders of the benefit of an obligation solemnly issued by the state, would have used other words, would have gone further than barely to give the holders a permission to exchange if they saw fit ; in contemplating the case of holders who might not chuse to exchange, they would have gone on, and declared explicitly the consequences of not exchanging.

But, Sir, do the operative words of the repealing clause destroy the debt of which the New-Loans are the evidence. In order to destroy them, the certificates themselves should be declared null and void ; because the payment of the interest or principal expressed on the face of them ceases to be secured by any law ; does the debt of which they are the evidence cease to exist ? Can the existence of a debt depend on the existence of a provision for the payment of it's interest or principal ? May there not be a debt without any existing appropriation for the payment of the principal or interest ? Surely there may.

How then can it be said that by repealing all laws specifically securing the payment of the principal or interest, the debt itself is annihilated ?

No, Sir, both the Preamble and the Act clearly show, it was only meant the exchange should be optional, and those who did not chuse to exchange should retain their certificates valid on their original grounds, though without any particular appropriation for the payment of the principal or interest : This is the case under the Continental loan, and those who did not choose to accept the terms of that loan and subscribe to it, still hold and were meant to hold their evidences of debt as valid as at the first moment of their existence.

The preamble to this Act states that the funds which were intended for the payment of this debt were likely under the new government to be transferred to the Treasury of the Union.

It was for this reason that the laws which specifically secured the payment of interest or principal the New-Loans

Loans was repealed, leaving the debt itself, of which they were the evidences, sound and entire. Says the state, I do not mean to destroy my obligation, I cannot do it, but my funds are gone, and I must suspend the payment, take your chance of my future competency, eventual solvency, and ultimate payment, or I will give you another choice, you may if you had rather re-exchange my obligation for those of the continent, then take back your Continental certificate, and give back my New-Loan.

Therefore, Sir, instead of charging the Comptroller-General with having transgressed the law in violation of his duty and to the prejudice of the state, rather let it be said, that he magnified the law and made it honorable.

If the provision in the third section respecting the Land-Office be regarded, it will be recognized, that by the second section an obligation is imposed not upon the holder but upon the state, pay the New-Loans on application with a like sum in Continental certificates, let it be remembered that this idea of exchange is altogether out of the question, as it does not come after the repealing clause, the obligation, I say, is altogether on the state.

I ask then when the obligation of this transaction is not equally obligatory on both sides, and when the state is either to pay or take up the New-Loans on the application of the holders, by delivery of its own property of a particular kind, but equal value, what is the reason, or meaning of it?

Does it not imply necessarily a right in the holder to demand, and an obligation on the state to pay or deliver?

Does it acknowledge the debt or not? Are not the Continental certificates strictly the property of the state? When they are obliged to part from them, does she not part from a thing of value?

If the state lies under this obligation, the New-Loans are a debt due from her, strictly and properly speaking, though they are redeemable only in a particular mode.

What

What are the Continental certificates? They are not money to be sure!

But they are a commodity, or thing of value: The existence of the debt does not depend on the species of payment: Whether my satisfaction of a demand, my dislodging an incumbent obligation on me, is done by the delivery of money or any other obligation, it is a debt still.

Let me ask, whether any subscriber of state debt believes that Congress if their funds were to fail for the discharge of interest, could compel them to take back state certificates again. AH PUNIC FAITH!

This would have been a mere tender law, and consequently void; and a nullity.

The continent had assumed state debts; the entries were made on the books of the Treasury. In other words, will the United States perform their engagements if the United States should say, take back your state certificates. Such a law would be unjust, and not binding; any subtraction of the debt would be dishonorable to the Union; it would rip up credit from its source—Oh! such an idea is preposterous. What then is the meaning? Then sure, it does recognize the debt. Are not the Continental certificates strictly the property of the state.

Suppose for instance, that Congress had enacted that proposition into the funding system, which was proposed by the Secretary of the Treasury in his report on public credit, that two thirds of the debt should be funded at an annuity of six per cent. redeemable at pleasure, and the other third be paid in lands in the Western Territory, at twenty cents per acre. Would this have been a destroying of one third of the debt? No; it could only have been in this case a modification of the payment. Mr. *Gallatin* in his testimony (page 296) declared that it was immaterial to redeem that way or by the Land-Office, the price being then nearly equal; the Land-Office was shut against the New-Loans by the Act of March 1789, but another door is thrown open, another fund is substituted for the holders of the New-Loans,

Loans, in point of principle the same. The state says, we cannot go no further, the holder does not get quite so much; Mr. *Gallatin* tells you, whilst the Land-office was open, a fund was provided; then the Land-office being open recognizes the debt; shut the Land-office, the loss is certain. Here is a recognition of the debt; this is a matter of disgrace to *Pennsylvania*, first make an advantage of a bargain, then depreciate, and lastly buy in at a discount.

Who is our accuser? The State of *Pennsylvania*. I demand that the state of *Pennsylvania* will come with clean hands herself; we are ready to receive the stroke of justice; there is no force in the objection; it is of no consequence to say that Congress would eventually pay the money on the Continental certificates; the means of reducing that to possession are certainly just as valuable as the benefits those means can procure, and the parting with the means is parting with the end, and therefore with the value.

Because, I pay my debt to my creditor with the bond of my debtor, it makes no difference.

To explain further. If the New-Loans are admitted as debts of any kind; if they invest the holder with a right, and impose an obligation on the state, as in the words of the Act; if those holders are creditors at all of the state, then they are within the sixth clause of the redeeming Act of the 10th of April 1792. (Mr. *Higginson* was interrupted by Mr. *Ingersoll*, who said, "*It is not admitted.*")

If the holders are creditors this will not be denied. Are the holders of the New-Loans creditors of any body? If they are creditors then, and the New-Loans are the evidence of that credit, to whom are they creditors? Of the Union? No. Are they creditors of the State? No; say they! that character is destroyed.

Justice and simplicity delight in each other; they are the creditors of the state, or more literally speaking, they put their trust in the state, and the state on the other hand, in this Act, acknowledges that she has something

something in trust for them ; which she obligates herself in this very Act to pay or deliver.

But, it is said, that this Act had received a silent construction from the statements of this, and other officers, speeches of the Governor, wherein the claims against the state are enumerated, in which the New-Loans were omitted, reports of committees on ways and means, in which the actual demands against the commonwealth are set forth, in many places they are called New-Loan debts : These were likewise omitted, all being after the passing of the Act of March 1789, make a strong argument, as shewing the uniform construction in all their procedures.

It is not safe to infer strongly from mere omissions, this is a negative circumstance, to infer from the omission more should be shewn than the omission ; that there should have been a propriety or duty in absolutely inserting them.

The Executive whose part it is to address the Legislature on the opening of each session ; to communicate to them the transactions of his department, in the execution of pre-existing laws, to point out the objects which seem particularly to claim legislative attention, and above all, to state the situation of the Treasury, the amount of existing and payable obligations, for which provisions must be made by actual appropriations.

Finds it necessary to resort to those officers with whom the documents giving this information are lodged : These officers make reports with an eye to this object ; the Governor takes this report for his guide to that object in his speech, or other communications.

And then the committees on ways and means, in the House, whose very name and stile point out their duty, and their sphere, reported upon the same subject ; in neither statements, speeches or reports were the New-Loans included after the passing the Act of March 1789. And why not ?

Because there was no propriety in including them, because they were unfunded, and therefore irrelevant to
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the subject of Ways and Means : (Because the arrears of interest excepted which were expressly stated) there was not arising out of them any demand which the Legislature had made actually payable, and for which an appropriation with Ways and Means would be necessary. It was on this ground the unfunded depreciation was not included in them. To draw any inference from this omission would destroy the distinction between funded and unfunded depreciation debt. If an appropriation had been necessary, it would be a subject for the consideration of the committees on Ways and Means. It is one thing for the Legislature to resolve to pay a demand, and another, and a subsequent one to provide Ways and Means, 'till the former is done, the latter is nugatory and unnecessary.

Again, Sir, it is true, that in the last report read, which is the only instance of the kind, there is a statement of all the debts of the commonwealth, and also the sources of revenue, in which the unfunded depreciation is included, and the New-Loans are not included, but this will be accounted for, when we consider ; that the Land-office was open to the unfunded depreciation certificates, whilst it was shut against the *New-Loans* : for which there existed the provision by exchange in the Act of March 1789, the State was redeeming her New-Loans with those who choose to make the application without diminishing her own active capital, while the holders of the Continental certificates exchanged, suffered a diminution on the nominal value, contemplated in the funding law of Congress ; but as long as the State kept her Land-office open to the unfunded depreciation certificates she was actually paying off the unfunded depreciation out of her own capital.

But these topics may certainly be dismissed, for if the committee had expressed their opinion directly against the New-Loans as a debt, it would be neither more nor less than the last committee did, who originated this impeachment, and could have no more influence

or weight, except their opinions had been bottomed on a more solid foundation.

But, again, it is contended from another quarter that this subject hath received a construction, and been expressly decided upon by the Secretary of the Treasury against their subscribability. Permit me to turn for a moment to that correspondence, the first letter which is connected with this supposed decision is the letter of *Mr. Gallatin* of January 14, 1793, (page 74-5-6) and its answer, (page 76-7-8) by which it is attempted to be proven that he has decided on their non-subscribability.

(After the two letters were read, *Mr. Higginson* observed.)

I will not undertake to say how far it was proper for an individual member of the committee to anticipate the Act of the whole, and as it were forestall information on the subject; however, it may be remembered, that at this time, the impeachment was slowly growing under the fostering kind culture of the writer's, (*Gallatin*) hands.

The first circumstance that strikes me in reading *this letter* and *the answer*, is, that the two last questions were left unanswered by the Secretary of the Treasury; to the last he replies nothing, and on the matter of the second he observed hypothetically, that if the New-Loans are not a debt they are not assumable; from this circumstance I infer, considering that gentleman's character, (I mean the Secretary of the Treasury) that those questions were in his opinion improper; at all events it is certain that the answer to it was not what was wished for, otherwise the subsequent letter of the Governor, which I shall presently read, would have been unnecessary, the object of enquiry being precisely the same. This letter of *Mr. Gallatin's*, contains a singular course of reasoning, and deductions from premises, which the writer knew at the time to be unfounded. The Secretary states forty thousand pounds, as outstanding; he (*Mr. Gallatin*) then goes on to observe, " But as some
have

have been offered," &c. (page 75.) Sir, he had it not more in proof that some of them were not so exchanged after they were offered than before. From the documents of the Comptroller-General a report had in the first instance been made to the Governor, and transmitted to the Secretary of the Treasury; the writer's animadversions therefore on that ground impliedly criminate that officer.

He observed also, that "I should be led to think," &c. The grounds of the Secretary's opinion did not imply any such declaration; but even if the premises had been true, the conclusion would not follow: This would indeed be a fiction with a witness to it.

Here I will take it with Mr. *Gallatin*, that the reason why the Secretary of the Treasury did not require the surrender or suspend the interest, must necessarily have been, because, he looked upon all the New-Loans to be either redeemed or re-exchanged; now, if in order to account for the Secretary's not requiring a surrender or suspending payment of interest, the inference is that he considered them assumable and redeemable; Does it follow that he should reject them as assumable? by no means. The contrary is the proper conclusion; it follows immediately and directly that he should admit them as assumable, and it would also follow, that the demand could only be on the grounds that they were assumable, and also that a suspension would follow unless the Continental certificates were surrendered, which the Secretary of the Treasury agreed might be done.

But the answer to this letter did not contain the idea which seems to have been anticipated and expected by the writer; therefore we find the Governor writing to the Secretary of the Treasury on the same subject the 29th July 1793, (letter page 351-2 then read) and the Secretary's answer of August 21, 1793 (see page 218-9). This letter left the question of the validity of the Act of March 1789, respecting the assumability of the New-Loan certificates untouched. The opinion of this officer on the subscribability of the certificates is not expressed
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in any part of this letter. "These circumstances, &c." this sentence contains an opinion, but that opinion is not on the principle that New-Loans are not assumable, is not, that the law of March 27th, 1789 destroyed them as a debt, but it is that the foregoing enumerated circumstances arising from the interference of *Pennsylvania* have amounted to a virtual rejection of them in effect; which does not even implicate his opinion on the question of law.

Again, "I was about to conform, &c."—This surely does not imply his own opinion, and how far this officer, after having referred a question of law to the Attorney-General of the United States, the first professional officer of the government, and received his opinion, may think himself bound by it, I cannot undertake to determine.

It is probable however, when the question was somewhat doubtful and the opinion founded on public expediency, when this State appeared so anxious to avoid any misunderstanding with the Treasury of the Union, that opinion might be considered obligatory as to the fact of admitting or rejecting them. We contend, however, that the Secretary of the Treasury had not in this letter expressed his opinion at all on the operation of the Act of March 1789, much less on the validity of it; if then, it is clear, that the Secretary of the Treasury has in the course of this transaction expressed his opinion unequivocally in favour of the New-Loans, and if in this letter he does not express his opinion against them, there are still odds in favour of the officer now on his defence: But I go further, Sir, and contend, that if this officer has at all expressed his opinion on the principle of this question even after the disclosure of the Act of March 1789, it is in favour of the New-Loans and not against them.

This will appear from several passages in his letter in answer to Mr. *Gallatin's* letter; when the Act of March 1789 had been brought into his view, for he expressly adverts to that objection.

Before

Before I read those passages, suffer me to make a comment on the first part of a former letter (see page 76, &c.) from this officer. It may serve to shew that the extreme solicitude discovered by the State with regard to this question might have betrayed the Secretary of the Treasury into a want of accuracy, a mistake which can be very seldom imputed to him.

The paragraph to which I allude is that (page 77) "*that they should at the time of being subscribed be recognized by the existing laws of the States as evidences of debts by them respectively owing.*" With the most respectful deference to the writer of this letter, I conceive that this expression is not sufficiently defined or accurate; for if any State had passed a law abrogating certain certificates, which by the funding law were made subscribable and redeemable, that law would not be permitted, or suffered to take away that right or benefit thus given and guaranteed by a pre-existing and paramount law of the United States.

Because, after the passing of the Act of the 4th of August 1790, the whole loan under the assumption, at that rate, might have been defeated, frustrated, and rendered void.

In a succeeding paragraph, he observed, "If however the New-Loan certificates are not by the laws of *Pennsylvania* considered as *debts* but merely as receipts for certificates of the United States," &c. (see page 78.) It may be observed that this is a mere hypothetical expression, and as it comes in as a qualification to the other remark, that as the certificates were then presented, no doubt could be entertained of their assumability, it clearly implies that if this condition fails, that is, if the New-Loans cannot be considered as mere *receipts* demandable at the pleasure of the government, then no doubt could remain of their assumability also.

Now taking it for granted for a moment that the State could convert that into a mere receipt, which was originally issued as an obligation, yet she has not done it; as there is nothing then which obliges the holder to part
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with his New-Loan on the application of the State, it is utterly impossible to consider the New-Loans as mere receipts, demandable at the pleasure of the State; and their being so, constitutes the very object of the Secretary of the Treasury's supposition. As then this hypothesis fails, as the New-Loans cannot be considered as mere receipts demandable at pleasure, what follows? Why, they revert back to their original ground, the proposition assumes its first and original form, and in the opinion of the Secretary of the Treasury, they are assumable:—This idea is held out in another of his letters, where he adverts to the Act of March 1789, but to suppose that the holders of New-Loans are creditors, and their certificates no more than mere receipts, and consequently no debts, this position cannot be supported without doing a violence to the letter of the law; but, on the other hand suppose we shall coincide with their construction of the Acts of the Legislature, and agree with the Attorney-General of the United States himself, who says, (page 81) that “the Act of March 1789, &c. abolished these certificates as debts of the State, as wanting the due recognition from the State, and cannot be legally received upon loan.” A moment's consideration will shew that this was a contract: And when the Constitution of the United States is brought into view, this instrument says, that all debts and engagements shall be as valid against the United States under this constitution as under the confederation. But they say first, this does not apply, and secondly they say, the Constitution refers only to contracts between individuals, and not between a State and her own citizens.

Now it is certain, loans are contracts, and if contracts are loans, and the Act of March 1789 passed after the adoption of the Federal Constitution, then it is certain that the New-Loans are subscribable and consequently redeemable.

If it can extend to contracts between citizens of a State, *a fortiori*, it extends to contracts in which the State is a party.

So intimate is the connection ; so great is the influence which the conduct and character of the several States have upon that of the Union, that the framers of this instrument must have been blind to the general interest, if they had not introduced this provision.

To tie up the hands of the Union, therefore, in that Constitution would have been useless, without tying up also the hands of the States with respect to their contracts.

Will the United States tie up their own hands and not tie up the hands of the individual States ? Thus guarding the two extremes and leave a vacuum in the middle unguarded !

What was the reason for inserting it in the Constitution ? To preserve public credit. Is there a more delicate subject in the world than public credit ?

The situation of the country at the time made such a provision necessary. The *American* name which from the independence had been sliding fast to ruin, had every thing to make her happy, but wanted one thing to make her respectable, that was CREDIT ; the grand *desideratum* without which the rest would be nugatory and unavailing.

Sir, if the limbs were palsied, what would it avail that the body was sound, I will not insist upon the proverb of the sheep, but this I will say, that where the children turn out badly, it is apt to hurt the reputation of the family : If a State had the power of impairing her own contracts and sacrificing her faith, then it would follow, that however well disposed the general government might be, however sound at the centre ; yet all the States in succession might sacrifice their credit by impairing their contracts, and the Union robbed of her respectability, and her credit by the mismanagement of her children left to parry the strokes of fortune.

But another thing ; this omission would not only have been the road by which the credit of the Union would desert it, but it would have been the source of confusion and contention at home. If the Constitution had
not

not expressed this prohibition, civil wars might have been the monuments of its weakness. While in one State the obligation of contracts was held as sacred as it ought to be; in another they would be prostrated to temporary convenience.

Taking this case, then, to be literally within the words and essentially within the spirit of this clause; let us see in what manner it has been violated.

And first. Were the New-Loans a debt, or evidence of a debt due from the State of *Pennsylvania* at any time before the passing of the Act of 27th March, 1789?

As to this, I take it to be undeniable that the New-Loans had been a debt of this State. This is not only acknowledged and implied by the tenor of the articles themselves, but they are expressly called a debt of the State in the Act which created them; and also in the Act which impaired them.

Indeed, this is conceded on all hands, except by one, the Treasurer of the State (see page 68) in his letter to the Speaker of the lower House; wherein he stiles them "*Which in fact never were a State debt.*"

It may be observed however, that if the law of March 1789 should be found not to abrogate or destroy the debt, which I think will appear, yet if it in any way impairs the obligation of the contract, it is most clearly and undeniably a violation of the Constitution of the United States, and therefore void to all intents and purposes, and if so, this tribunal is bound to consider it, as never having any existence.

Again, and for the last time, upon a strict comparison of the Acts of March 1786, and that of March 1789, it will be found that the New-Loan certificates were equally unimpaired after the Act, as they were before.

Let us see how much, in order to distinguish between those parts which created the debt itself, and those which directed the payment of principal and interest: It may be considered the funds for payment of interest were temporary. (Mr. *Higginson* then read the minutes of 1789, page 145, by which it appeared that the provision

sion respecting the principal of the New-loans was introduced at the third reading of the bill. The original and primary object of the bill being, that the interest should cease, as the provision for that purpose had been temporary.

In page 184, "it was moved by Mr. *Fitzsimons*, seconded by Mr. *M'Pherson*," &c. The bill originated through the exigency of the State. Before the law passed, the Land-office was to have been shut, in what manner was it to be produced? it was forbidden—Is not forbidding a *payment* in futuro, a testimony of the existence of the debt.

The payment of New-Loan certificates was prohibited in the Land-office. Now, what parts are those of the Act of March 1786 which created the debt? Even the Act itself did not immediately create the debt; those parts in the second section do not. The loan was to be opened, suppose none chuse to subscribe to it immediately; then there would be no debt: By opening, subscribing, and paying, the debt sprung into existence, that moment it became a debt: and a certificate is given merely as an evidence of that debt. (The second section of the Act of March 1, 1786 was then read.)

There is nothing in this to secure the payment of either principal or interest.

Nothing in the second section directs or secures the payment of the debt, the kinds of certificates directed to be received on loan are not immediately under the first and second sections.

But the repealing clause of the Act of March 1789 has full force, satisfaction and complete existence out of the other clauses of the Act of 1786. Ingenuity itself with all her hundred eyes is not able to escape the inference which I draw from a strict comparison of the Acts of March 1789 and 1786.

Why then need we be drawn into the imputation of so disreputable a violation of public faith? How then, can it be charged, as hath been done by one gentleman, that this officer by the *magic wand* of his office

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had conjured up the ghosts of the departed New-Loans to frighten away the dollars of the commonwealth, without imputing to the State, who was their creator, the odious crime of unnatural murder?

Let us now consider how this hath been construed by the Legislature.

In an Act passed the 30th September 1791, for the relief of *Sarah Caldwell* and others, who had lost New-Loan certificates, the State undertook to subscribe for their use, and to pay to them the interest on such subscriptions, on their giving security to indemnify the State against the holders of her certificates.

This Act proves two things. First, that the New-Loan creditors of themselves could do nothing, they had no claim on the Union, and therefore were not creditors of the Union. And secondly, By requiring an indemnity from the holder, inevitably implies a right of demand on the State vested in that holder, and that right of demand whatever it be, constitutes the strictness and propriety of character of CREDITOR.

In the instructions of the Supreme Executive Council (page 267) are these words, "*You will issue a new certificate.*" Will it be contended that these are mere receipts? can certificates of parts be debts, when the whole was no debt in its original form?

As the case then is brought thus clearly within the scope of the redemption law of the 10th of April 1792, what can be offered in opposition to our conclusion?

One thing only, that as the New-Loans themselves amounted to more than this State's proportion of the assumed debt, it could not be imputed to the Legislature, that they meant to include the New-Loans: it may be remarked, that as the inference drawn by Mr. *Gallatin* from the consequences of the rule laid down by him relative to the 4th article of the confederation, it only proved the law a bad one.

As this is introduced a presumptive argument is brought forward against it. They say, how injurious it is to the State, and of what bad consequences to redeem

deem her own debts at 20*s* in the pound ! If they call this a bad consequence, give it that construction, as a presumptive argument as it regards the State, the consequence is with us, and not with them.

Here is a singular circumstance, they have violated the rules of law, they have construed the law of 1786 strictly with regard to this object ; and they have construed the law of 1789, which confers benefits liberally in their own favour.

Again, another argument is brought forward.

It is said the sixth section is a proviso to the second section.

If so, the object was those which she had before redeemed in the second section to the benefit of the state.

If so, the sixth is co-extensive with the second as to objects. If the New-Loans by the sixth section are redeemable through the medium of the United States, it is still better : If they are not redeemable, the mode is not commensurate to the objects contemplated in the second section, and it is wrong to ascribe that to the Legislature, which could not be her motive.

Bills of Credit are enumerated and provided for in the second section ; the sixth section is introduced to be beneficial, and yet Bills of Credit are not included in that section at all, notwithstanding which, it is called a provision to the second section ; with an eye to superior advantage, they ascribe a ridiculous motive to the Legislature : that by the Act of April 7th 1791, the arrangement which is injurious refers only to the Act of March 1789, as an arrangement for the *future* : The State *may* deem it proper to make such for the purpose of avoiding any interference with the State or domestic subscription.

Had it been the reason the State would have actually assumed her domestic debt.

It was easy to tell the amount of what was outstanding.

It was only to deduct the outstanding from those on hand ; there was no difficulty ; it was only to add or to subtract ; the object was to leave greater room for those
debt

debts which were a greater and a more immediate burthen on the State.

One of two things must be their object.

1. Either to narrow down the interest, or 2. To give a facility to re-exchanging, and to their subscribing to the Continental loan; and in either case the New-Loans would not be re-exchanged at all.

No other reason can be properly given for it; if we construe the law liberally, and not foolishly.

It was contended, that if we should have construed the sixth section literally, we could not have given it so foolish a construction.

It is said the Comptroller committed himself by rendering an estimate to the Governor. If a provision is made in the sixth section of the Act of the 10th of April 1792, there may be some reason for it; but if not, the supposition is unsupported.

Let us consider this a little; it is clear from the second section, that no provision is made there for unfunded depreciation, and none for the New-Loans in the same section.

One of them it is agreed, and both, we contend, are included in the sixth section; it is also clear that no certificates which are not included in the second section, can participate in the funds to be created by the sale of 3 per cent. stock; for that fund is limited to the objects therein enumerated.

If this be true then in an estimate which was to direct the Executive in the sale of 3 per cent. stock, neither the unfunded depreciation nor New-Loans should have been included, even if the estimate had been made after the Act for re-opening the loan had passed: But at all events, I ask, how was it possible that the two officers, from the 13th to the 16th of April, could include in their estimate objects that would be embraced eventually, if at all by the sixth section; whereas the Act of Congress of the 8th of May 1792, was not then passed.

Instead of using this construction of the law for their

own

own purposes, they are compelled to use it for our purposes.

Let us for a moment suppose, that the Legislature intended as they are inclined to have it, and see the consequences, and how do you find this construction of theirs, to work the destruction of the debt? Their construction is conjectural, useless and dangerous: If subscribability is the criterion, they are mistaken in the premises; if the New-Loans are a debt, subscribable and redeemable are convertible terms.

If the ideas are not to be collected from the Act itself, then we shall in time have an hundred laws instead of one, then an end to legislation.

Having made these observations on the first articles respecting the law, I will in the next place treat of the the motives. But first permit me to make some observations respecting the three last articles of impeachment.

We avow the facts contained in the fifth article, defend the legality, and contend we had a right so to do.

When the defendant assumed the office of Comptroller-General, he did not relinquish the duties of a citizen. How far it may be good policy to pass inhibitory laws, and how far it may be improper, to pass such positive laws, until such laws are passed, we have certainly a right, and until a question is raised on such positive law, our actions cannot be impeachable.

We have heard from *Wodeson* that a public officer should have no interest distinct from the State.

Where is the force of this reasoning? attend to the circumstances. That impeachable matter must be an injury to the State, and not the gain of the officer. Where is the injury to the commonwealth in this particular? In what does it consist? Does the payment of a just and valid debt constitute this injury and detriment? If such can be viewed in this light it is well worthy of observation.

The 6th and 7th articles aim to place us in a much more irksome and ugly situation, and here I cannot help remarking on what fell from the other side; that great
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merit is due to them for being able to shew so much, when from the heinousness of the fact, the Comptroller might conceal the whole matter; how singular, that this very proof and testimony is evincive of our innocence. Nay, in this particular our accusers take merit, that they have shewn and proven too much.

There is one thing common to both these articles, they infer property in the State, and make it by implication necessary, and from different premises; it is presumable the framers of these articles thought property essential to constitute the offence.

In the sixth article it is inferred from the certificates being lodged for the purpose of being re-exchanged. It may well be asked, Had the owner no controul over them, what was his ultimate object? On what condition were they to become the property of the commonwealth?

Sir, the Act was only inchoate, indents were to be paid, or received. Could the State withhold the certificates if the party choose to withdraw them? Would it not be liable to execution as the property of the party? No doubt of it.

The committee, who were the drawers of this article, have shewn their idea that this conclusion was weak, and unsound, for if this constituted property, the fifth article would be nugatory and unnecessary.

(The fifth article was then read.) This gives a definition of the exchange. The committee have plainly discovered that the facts in the sixth may be demurred to.

What is the proof brought forward to support this 7th article? It is said Mr. *Blair M'Clenachan* was once the proprietor of a certificate which he never sold to us, and they endeavour to throw the burthen of the proof on us. This witness speaking from memory, says he did not receive this certificate from *Matthew M'Connell*, he does not pretend to say that he sold or exchanged this or any other certificate with the Comptroller-General; but he tells us expressly that he sold to others.

Let

Let us examine this a little. He says he did not receive our certificate of £. 3275 : 19 : 4 from *Matthew M'Connell*, this he absolutely received in April 1788.

The witness, who is brought forward is unable to prove how he came by any of his certificates.

This idea involves a new and delicate point of law, taken from analogy in other criminal cases. When a felony or forgery is sworn to, and the instrument with which the felony or forgery was committed be found on a person, the presumption is so strong, because he has the thing wherewith the crime was perpetrated, that the party with whom the instrument is found must account. Here they say the witness did not sell it to us; but they endeavour by the absence of the fact to lay the burthen of proof on us, to make a criminal charge where there is no proof of criminality.

A certificate was once Mr. *M'Clenachan's*; one of two things must be admitted. 1. That the certificate was exchanged, and criminally converted to our use; or, 2. We bought from some other person. It proves nothing against us. Out of the two modes, which is most presumable? one is a fair purchase in a circuitous route, the other a criminal conversion.

Is there a criminal tribunal on earth which would admit a proof so nugatory to support and enforce a prosecution? Need I ask which will be chosen. Is the heaviest and most atrocious item to be supported by the slightest proof, by the vague remnants of a memory frail in its best estate? If this were supported as it is represented, the breath of the offender might taint the walls that hold him. But we find a mill-stone in the articles, and a feather in the proof.

Sir, I do not fear, because I do not believe that this tribunal will find it to their satisfaction to convict a respectable fellow-citizen and a responsible officer upon a rash and dangerous implication upon evidence so trifling and indefinite, and that too going to a charge perfectly vague in itself and general as the light we see by.

This brings me to the second division of my subject,
relative

relative to the criminal motives, and being more than half through the arguments, it will take some time to finish, and as it will be inexpedient to break off the subject in the middle, I hope the Senate will adjourn.

Mr. *Lewis* rose, and observed, that the gentleman had spoken three hours, and must be exhausted, and requested the Senate to adjourn.

Adjourned accordingly to four o'clock same evening.

In the minutes of the House of Representatives the following entry is recorded :

" In conformity to the resolutions of the 25th of February last, the House resolved itself into a committee of the whole in order to attend the trial of *John Nicholson*, Comptroller-General of this commonwealth now depending before the Senate on the articles of impeachment exhibited against him by the House of Representatives.

" The Speaker quitted the chair and Mr. *Wynkoop* was placed therein.

" The committee of the whole then proceeded to the Senate-chamber for the purpose aforesaid.

" After some time,

" The committee of the whole returned to their own chamber.

" The Chairman left the chair, and the Speaker resumed it.

" The Chairman then reported that the committee of the whole had attended the trial of the said *John Nicholson*.

" The committee appointed to manage the trial of the articles of impeachment against *John Nicholson*, Comptroller-General, reported that they had made further progress."

Same day, 4 o'clock. P. M.

THE Senate met, Court was called, &c.

Mr. HIGGINSON.

Gentlemen of the Senate,

Length of duty this forenoon has given me a violent head ache, I hope the Senate will adjourn; I will take but an hour in the morning: In the mean time I will concentrate my ideas, so that I shall not take up much of your time.

Mr. *Morris* informed him, that the Senate were disposed to indulge him. Adjourned.

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“ The committee of the whole returned to their own chamber.

“ The Chairman left the chair, and the Speaker resumed it.

The Chairman then reported that the committee of the whole had attended for the aforesaid purpose.

“ The committee appointed to manage the trial of the articles of impeachment against *John Nicholson*, Comptroller-General, reported that the counsel on the

part of the defendant who had commenced his arguments this forenoon being indisposed, the Senate had therefore adjourned the further hearing thereof until ten o'clock to-morrow morning."

Twelfth day of the trial.

WEDNESDAY, MARCH 12.

THE Senate met pursuant to adjournment; the members of the House of Representatives in committee of the whole repaired to the Senate-chamber as usual; the Comptroller-General uniformly kept his seat as described in page 202, and wrote without ceasing, as well during the time employed by his own counsel in the defence, as by the opposite party.

Mr. HIGGINSON spoke as follows—

Having yesterday observed on all the articles of impeachment, except the third article; as it respects matter of evidence in supporting the criminal intent in redeeming or causing to be redeemed New-Loans: I will make some remarks on that head, and the circumstances which evince the integrity of the officer now upon trial.

To introduce this, it is necessary to observe, that, out of the doubtfulness of the question on the law itself, if on all hands the construction of the several Acts has created embarrassment, it will be remembered, that on the reading of the report to the Lower House, after the committee had had the subject before them a very long time, Mr. *Gallatin* apologized for that delay by informing the House that they had waited some time for the opinion of the Attorney-General of the United States (Mr. *Randolph*.)

If their charity hath begun at home, I hope yours will not end there.

The Secretary of the Treasury doubted the construction of the Act of March 1789, and deemed it so doubtful

doubtful a question as to induce him to consult the law officer of the general government.

Now, sir, let it be recollected, that in ordinary and perspicuous cases, this recourse is never had to professional and official opinion. From this, then, it may fairly be inferred that this case was not ordinarily perspicuous.

It is impossible to state the degree of perspicuity which is necessary for any particular mind to found a conclusion upon.

But if the mind of the Secretary of the Treasury in considering the case from the relation that every law bore to the subject, partook of these embarrassments, how easy is it to conceive that from the *bona fide* construction of the Comptroller-General, that decision might have resulted, the consequence of which was the redemption of these certificates.

If then there was this want of perspicuity that created on all hands hesitation and embarrassment, it would have been highly useful and proper in the Legislature to have given to this section a clearness incapable of being mistaken. If upon laws of uncertain construction, every error that an officer commits in following the dictates of his own judgment, should be liable to impeachments, such posts must have been deserted, or held on a slippery ridge, and at a great hazard, when every step may be that of destruction.

But in the second place with regard to their subscribability, other officers of eminence, of talents and integrity, concurred in opinion with the officer now under consideration.

Sir, it is in testimony that the Secretary of the Treasury pending the first loan was of opinion, that the New-Loans were subscribable, and gave such an opinion to the Continental Loan-officer, and that the business is not to this moment decided upon, and he mentioned the same to the commissioner aforesaid (see page 273-4-5.) "I do not consider you as justifiable." &c.

Mr. Addison, a law officer of the government, was
of

of this opinion, a gentleman well qualified, and of much integrity. What is to be inferred from the silence of all the State officers during the demand of the Continental certificates? they all held the same opinion. (The letter, page 102, was then read.)

If the Secretary of the Treasury had been unacquainted with the law, were the Governor and Secretary of the commonwealth ignorant? The whole tenor of this letter necessarily implies the sense of the writer to be that the New-Loans were liable to be assumed, for the whole provision being to prevent the payment of interest twice on the same sum; no question could arise out of it with regard to the New-Loans, without their being subscribable: In all, the *suspension of interest* and *assumability* were the principal things to be considered. If any doubt had existed with the Governor, would he not have sifted it to the bottom? If any doubt remained respecting their subscribability, would they not endeavour to clear up the matter?

With regard to the Secretary of the commonwealth, there is a circumstance which strongly corroborates the assertion, that he must be satisfied of the subscribability of the New-Loans. He appeared to be surprised when the matter of the assumption was communicated to him; this information seemed to run counter to his judgment! The Secretary had seen Mr. *Nicholson's* plan of finance, in that plan the New-Loans are recognized as a debt; he approved of the plan, (see his letter page 286.) It came before him with its "prominent features;" the plan put the New-Loans on the same footing with other debts of the commonwealth. Why surprised? Perhaps the reason may be, because there was no redemption law at that time. Is that a reason? Why? certainly not.

Further, It is given in testimony that after several conferences the Register-General concurred in opinion with the Comptroller-General, and that the accounts contained some certificates depreciated on the principal which no body could mistake for any other than New-

Loans;

Loans ; the probability is, that the same was redeemed ; immaterial whether before or after our abstract, which had been *bona fide* presented and redeemed : Yet this man, whom they represent as hackneyed in perfidy, this man who veiled and masked the proceedings to delude the other officers of government into error is found expressly to have communicated with them, while they participated in the conviction which that conference produced.

The next reason, then, that I would offer is that the Comptroller-General held the same opinion on the assumability of the New-Loans, long before the Act of April 10, 1792, by which alone he became interested.

First, From the testimony of the Secretary of the Treasury (page 287-8-9.) 2dly, From the Comptroller's own letter to Mr. *Smith*, the Loan-officer (page 271-2) eighteen months before the redemption law. Nothing is clearer than that the writer of this letter was confident that the New-Loans were assumable, although he was convinced they would not be offered subject to the disadvantages of the funding law.

It was against the interest of the New-Loan holders to subscribe them, it was for their interest to exchange them for Continental certificates, and then to subscribe those. In the next place, the same opinion is also expressed in his letter (page 220-1-2) to the Governor. I ask whether it is possible for any thing to express more clearly and unequivocally his opinion of their being a debt due from the state, and of their subscribability ; it seems from the former part of this letter that the Secretary of the Treasury had taken higher ground, and demanded a surrender of Continental certificates equal to the amount of New-Loans outstanding ; or suspend the payment of interest, this it is evident had been actually relinquished by the Secretary.

Hitherto the current of testimony sets in, strongly, on the side of innocence. (His next letter to the Secretary of the Treasury, page 277, then read.)

It will be remembered that in the letter of the 24th December 1791, five days before this, the Comptrol-
ler

ler tells the Governor, that none of the New-Loans were actually subscribed; though they were subscribable, and therefore there was no need of a surrender. This was the object of the negociation, and therefore he informs the Secretary of the Treasury of the same thing; that if a doubt should arise, whether part of the *assumed* or subscribed debt of *Pennsylvania* does not consist of New-Loans, it can be easily proved it does not. No body can doubt this to be the meaning, when they recollect that in his former letter to the Governor, and that to Mr. *Smith*, he not only recognized them to be subscribable, but said they were not, or would not be subscribed; it being against the interest of the holders.

Still less shall we doubt it, when we turn to the letter (page 278) wherein we trace the same sentiments.

(The letter page 223-4 was then read.)

Thus, we see the consistency and uniformity of the officer now on defence, in persevering in the same opinion for the space of eighteen months before he became interested. Sir, I think this gives a mortal blow to the prosecution, and the charge of fraud vanishes like the baseless fabric of a vision, which leaves not a wreck behind. But this is not all, for if we descend to the particular periods when the transactions took place, we shall discover there, also, a train of co-temporary facts, equally invulnerable and conclusive.

The next reason which I shall offer, arises from the caution which he gave the members of the Legislature when the redemption law was under consideration.

When the extent of that law was in contemplation, when gentlemen undertake to paint the distressed and ruinous consequences to the state, which would follow the admission of the New-Loans to sweep away the whole quota of the assumption of *Pennsylvania*, while at the same time it absorbed the specie from her treasury; let them have the charity to remember that this officer, whose spirit they are now grieving, raised his voice and hands against that dangerous proceeding at that time. This is not the language of disgrace.

But

But, again ; the transactions were conducted in the usual forms of office, and in his own name ; and it is remarkable that the committee on whose report this impeachment was founded, gave their opinion in that report, that the said *John Nicholson* has been guilty of a high misdemeanor for two reasons, one of which was that he passed and certified the New-Loans to the Executive in the usual forms of office, thereby causing them to be redeemed. The jet of the reason is in the "*usual forms*" of office, by which they were redeemed.

If then forms had been unusual, the very singularity would have been *prima facie*, a presumption and evidence of other than ordinary design or intention, this charge is indeed to make the usual course of business the evidence of guilt.

A like charge and equally unimportant appears to me the matters contained in the third article of impeachment.

This article is mean in substance, and pitifully drawn : The first thing singular is, that they begin with the criminality and go on to the facts. "In order to promote and procure his own emolument," &c. till it was actually reduced to possession, implying, that after the emolument was reduced to actual possession, there was a certainty or probability of detection ; this idea is too futile, nobody in their senses will believe this to be true ; for what purpose could it answer to deceive for the possession, when certain detection was to follow it ? Again in order to avoid "discovery till" &c. "he did not consult the Register-General," implying that after the emoluments were in his possession, he did consult the Register-General : Let me ask, how came this peculiar phraseology to be given to this article ?

We have had the history of that from Mr. *Gallatin*, who was the principal member of the House of Representatives at the time, we have been informed that upon the examination of the Register-General, although not examined upon oath, the first part of this article was founded.

It was found, that, after most of the abstracts had passed and the Comptroller-General had actually received the amount of his; there was a consultation among the officers, when the Register fully concurred in opinion with the Comptroller-General, and although there were sufficient distinguishing marks on the face of the abstracts, to ascertain that New-Loans were contained in them; and although these distinguishing marks were in a part to which the whole business of the Register was confined, namely the calculation of interest, and therefore, it was no fault of the Comptroller-General that they were not sooner known, and although the Register declared that when they were known, he was fully of the same opinion, and accordingly officially passed some abstracts afterwards, knowing them to be New-Loans; yet the committee, forsooth, instead of throwing aside the article as unsupported, resolved to amend the article, to suit the testimony whatever it might be, in order that the Comptroller-General might be set for a while on the stool of repentance; because the Register-General in calculating interest on a certificate depreciated on the principal, was not sagacious enough to find out that it was a New-Loan, and therefore in the true style of the dramatist, the passion for incident is to absorb every other faculty.

But, Sir, let me proceed to the facts, facts! Did I say? I was wrong, sir, there is not a single fact charged in this article, they are only omissions. That "he did not consult the Register-General, nor communicate the matter to the Governor" before he got his money, and that he did not discriminate between the New-Loans and others. It is pretended, that this was an incumbent duty on him, the contrary is clear, for neither did his duty require it, nor the usage or practice of the officers make it necessary. It is not shewn to be his duty but it has been observed that in so important a case, he ought to use some works of supererogation.

Is it singular that a man should be charged criminally, for the omission of that which avowedly was not required of him by law ?

As to his certifications to Mr. *Smith* the Loan-officer, I conceive them to be out of the question, for these reasons. 1. He was not acting then as an officer at all, but having received a letter from Mr. *Smith*, requesting information, he gives it as a friend to the best of his knowledge. 2. As he was not then performing a duty imposed on him in his official capacity, so neither was Mr. *Smith*, who received the information, bound to give any credit to it, unless he choose to do so. 3. As that information was for the United States, and not this state, if that information was attended with loss or injury, the government of the Union alone have a right to complain.

The certifications and proceedings with regard to our own state were in the usual forms of office ; no certificates were more particularly set forth or described than others. The New-Loans themselves were specifically ascertainable from the variety of dates in the commencement of interest, which no officer with superficial attention could overlook.—Besides this, one certificate in the subscription of the Comptroller-General was depreciated on the principal, it was not possible to mistake that for any other than a New-Loan ; therefore the certification of *genuine* and *assumable* being done at the request of individuals, and in no instance of the Comptroller's own subscription, it was a labour without the smallest interest or profit : If then this minute of *genuine* and *assumable*, had no sort of influence in the right or question of subscribing them, in what shape can it be criminal ? The subscription was in his own name also. Sir, however this may be lightly spoken of, yet to ascertain the motive it is of the first importance : As these certificates were payable to bearer it was in his power to have them subscribed in the name of some unknown person, and his interest in them could not have been discovered ; the whole transaction becomes

an easy riddle instead of a well concerted plot, this circumstance arose from conscious rectitude of mind, with that fearless independence, which is the noblest associate of honesty and its surest indication.

Another reason : Sir, it is notorious, when the impeachment was brought forward he solicited an immediate trial : it is not the part of conscious wickedness to court enquiry, but to dread and procrastinate it even when it is unavoidable, yes time and delay are the only harbours of guilt ! these things may be fetters to the guilty ; but they are wings to the innocent, when he was impeached, he flew to meet the prosecution. I will not enquire for what purpose that accusation slept in impotent abstraction in the bosom of a numerous committee, till the very close of the session.

Although many months have elapsed since this impeachment was preferred, although the committee of investigation, have used every effort during the recess, after trying by every means to discover official frauds, yet they have been unable to fasten on a single instance of the sort, among the numerous documents and the voluminous records of that department ; but they have laid their hands on a solitary fellow-citizen, the dark and doubtful corners of whose memory they have ransacked again and again, with the pleasing hope of discovering the thong that would bind in disgrace an obnoxious transgressor.

I will not pretend to say, that the motive for postponing the investigation was to suspend him during the vacation as a culprit with his lips sealed for the hand of scorn to point his slow and moving finger at. I will not say that it was to rake up the ashes of long-forgotten transactions, in hopes, that while the memory had lost the co-temporary circumstances necessary to explain them, they might by the breath of suspicion and party be invigorated and matured into a crime : But I will say, that whatever be the motives for postponing it, the impulse in the accused in soliciting an immediate trial, could be no other than the impulse of innocence.

Sir,

Sir, need I mention that such a thing would be against his real and substantial interest ; on this ground the gentlemen have placed the corner-stone of this prosecution. Common sense decides that the eventual emolument of this officer can have no operation as a proof of guilt.

It is understood in the first place, that he directly contravened his own interest in cautioning the members of the Legislature when the Act was under consideration. For laying it down as a principle that every man is most strongly inclined to make gain. He was either possessed of these certificates at the time the redemption law passed, and was of opinion that the law would warrant the construction it received, or he had them not at the time, and thought the law would not bear that construction ; now, if he was not possessed of them at the time, there was nothing to induce him to purchase them, as he had nothing to lose, and having given his opinion against them, he would have no motive in becoming possessed of them, but a firm belief that the Act would warrant their redemption. If he was possessed of them, or if he was not possessed of them, but only intended to become so, he certainly would not have interposed his opinion at the time, as it might be expected that it would have produced an amendment to the sixth section of the Act, by the introduction of some negative words. In the next place, it is not a difficult task to separate the appearance of truth in this sort of argument from the real fallacy which gives it a direction against the officer now on trial ; as it is to be understood that his eventual emolument is contended for, as the strongest proof of guilt ; and this is certainly nothing at all.

Let us examine the *truth* or *fallacy* of these transactions.

I take it that in the event, interest or speculation might result from either case.

If he corruptly put a decision upon the law, contrary to his real opinion, speculation and interest was his object. But I presume this emolument as we find it, would have followed the construction itself, whether
that

that construction originated in an honest or dishonest motive. In the one case, if he acted from a dishonest motive, speculation was his object, and he acted corruptly. In the other if he acted from an honest motive, speculation was the effect. In the one case he would speculate because he had so decided the law, in the other he would so decide the law, because he had predetermined to speculate; so that the argument of emolument is thus far as broad as it is long; but I apprehend on a closer inspection it will be found against the prosecution and in favor of innocence.

One fact is certain, that a profit has resulted to the officer, it's mother was either honesty or corruption, let it's parentage be decided by natural and fair probabilities; arguing from the effect to the cause. It is a fair rule of justice and common sense, that effects in the natural world shall be attributed to the most probable and the most natural causes, and in moral cases to the most innocent causes. This emolument might result from honest or dishonest causes: In the one case, speculation and emolument is the natural and legitimate effect of a construction fairly and honestly put upon the Act. In the other, it is the corrupt pretext for a construction inconsistent with the opinion of the party using it, and prosecuted at once against honor and honesty. So far are they from proving any thing, that their argument of guilt must be deserted, unless some other strong leading circumstances can be brought forward to its support. Are there any others? No. So far from being able to bring forward any proof to convict the defendant, that all their arguments seem to militate against themselves, and every circumstance adduced by them, seems to favor the cause of innocence.

But these observations might be spared, for how unspeakably absurd is the argument of interest when placed in contact with some part of the testimony. It has been proved by testimony in profusion, that this officer entertained the same opinion as to the assumability of these certificates, pending the first loan of Congress, and

and long before our redemption law passed, as he does now.

Sir, can we believe that it was the hope of interest which supported this officer through those scenes of deception, before the Act, which in fact created it, was in existence? Behold then the gordian knot untied, for the argument of interest to have force must take it for granted, that this officer, while he expressed his opinion unequivocally eighteen months before the Act of April 1792, foresaw nevertheless, that such a law would pass and afford him an occasion of profit; nay, further it must be taken for granted that his coincidence of opinion with the Secretary of the Treasury, and other officers of the state and general, government so long before the time, was a game of hypocrisy, which his cunning induced him to play to conceal the mercenary designs which futurity was to gratify.

Behold then this rope of sand, will this then, bind a victim to the altar? Can we believe that it was the hope of interest which supported this officer through those scenes of deception before the Act had an existence? For if interest was at that moment the embryo motive of his heart; if he could at that distance of time foresee the growing harvest; while he prepared his sickle to partake of it, instead of being arraigned as a culprit he should be deified as a prophet.

Mr. Speaker,

IN a public point of view it is much to be regretted that charges of such serious magnitude and importance, should be thus built upon the slenderest foundation.

It is observed by some parliamentary speakers, I believe (by *Chesterfield*,) that accusations by impeachment are not so likely to be well founded as presentments by grand juries, for while in the one case political objects and party spirit are most apt to govern the accusers, in the other they are generally governed by the dispassionate and impartial dictates of judgement operating on the weight of evidence. The history of impeachments in

England

England verifies this idea, and confirms its truth, perhaps, Sir, in a more popular government this circumstance and its consequences are the more dangerous.

It augurs not well of the public weal in a free country, where all officers depend directly or remotely on the voice of the people, to find them swept away from the port of confidence by the plea of groundless accusation.

An impeachment is an engine of State as sacred in its nature, as it is delicate in its construction, and nothing but imminent danger will warrant the use of it, the danger of falling a sacrifice to popular indignation, which sometimes even merit has provoked, or to party resentment, of all the resentments the most implacable, will enhance the difficulty of procuring good officers, while it depreciates the incentives to virtuous actions in those who are such; while events are our preceptors, and have taught us, that we should give to government only the same enlightened self interest, which is granted to a good man in the ordinary concerns of human life.

Let then the sword of the people be suspended over the heads of their servants, but let not its descent be so accidental or precarious that like the sword of *Dionysius* over the head of *Damocles*, it should be as much the tormentor of the faithful, as the scourge of the unjust.

Sir, the officer now on defence, discards all fear, he provokes no compassion, he solicits no favor, he demands but justice. Here are facts on which he challenges your consciences, and defies your persuasion. Winnow the chaff from the substance and the breath of heaven will dissipate it, so that it cannot be gathered. To construe a law is an act of the understanding, how wide is the difference between intelligence and integrity.

Let then the records of this tribunal, which his accusers had destined to emblazon his disgrace, harmonize with the decrees of time, the great arbiter of reputation; nay, the decrees of that arbiter who is greater than time, and greater than heaven itself.

SAMUEL

SAMUEL DEXTER, jun. Esq. *Member of Congress
from Massachusetts!*

*Mr. Speaker, and
Gentlemen of the Senate,*

THIS subject is very complicated in its nature, and my attention hath been much attracted to other objects, and interrupted in the study of this case: So singular were my circumstances that at the first appearance I might reasonably claim an apology. A stranger invited to appear before this respectable body, nay, invited by the honorable House of Representatives of *Pennsylvania*, to lend his aid to defend their cause, and assert their rights; my obligation was multiplied, when I considered the importance of the honorable House who made the application; conscious as I have been, that I shall not be able to add to the reasoning of the enlightened gentlemen (Messrs. *Morgan* and *Rawle*) who preceded me on the same side; perhaps prudence would have induced me to decline; but when called upon by so reputable a Legislature, nay, a stranger solicited to defend the cause of the public, and to redress their wrongs against one of their own citizens, loaded with the wealth and spoils of the commonwealth!

This consideration commanded my exertions and magnanimity; the invitation was too flattering, I could not refuse my aid; I will not waste your time in making prefatory observations, but will endeavor to make the cause now before the honorable Senate very intelligible, and therefore will divide the subject into four points.

1. *Has the defendant caused New-Loans to be subscribed, which were not subscribable by law?*

2. *Has he caused New-Loans to be redeemed, when by law they were not redeemable, and thereby had broken and violated the Constitution of this commonwealth?*

3. *Has he not appropriated to his own use New-Loan certificates which had been surrendered to the commonwealth by the holders, and should have been cancelled?*

4. *Has*

4. *Has he not done all this knowingly and corruptly to make unjust gain, betraying the interest reposed in him, and traded on the public confidence?*

These divisions were necessary before I begin to answer the objections which have been raised against the forms of these articles of impeachment; but no farther advantage can be taken of them, as to their form; they are not deficient either in substance or form—as to forms, two things are only necessary, 1st. They should be clear to be understood. 2d. They should be a competent plea in discharge of another prosecution for the same offence.

To make objections to mere forms, the reliques of antient times, I say, times of darkness and ignorance, is like the observation respecting the nets and the traps in which he had been caught: The articles are sufficiently definite, and answer all the purposes of justice in trials by impeachment. Mere forms are never attended to in such cases.

Impeachments should be so worded, as to answer two purposes, 1st. They should be definite. 2d. They ought to be substantial as to form: The articles under consideration are sufficiently *definite* and substantial, to answer these two purposes.

We have been told that the House of Representatives adopted this as a mode of *persecuting*, rather than *prosecuting*.

That honorable body does not wish to persecute, the business of the Legislature is primarily the protection of the innocent; the protection of the innocent is of greater importance than the punishment of the guilty; yet it is of some importance to the community when a public defaulter is punished.

A man who is clearly charged with such crimes, it is not unimportant to the public to know how he can acquit himself, and how he hath discharged his trust; although it is irritating to any Legislature to prosecute such an offender as the present defendant.

If zeal in the counsel who have appeared for the
Comptroller-

Comptroller-General, had been an evidence of innocence, the defendant ought to be acquitted; never had any defendant more brilliant display of rhetoric, or apparition of reason, to prevent his being found guilty, than the Comptroller has had on this present trial.

In my arguments I will consider two things, to wit, the law and the testimony; in the way that I have divided the subject, the different constructions of the Acts of Assembly as they seem to favour or make against the the defendant shall be attended to. The construction of the Act of 1786 relative the the issuing of New-Loans is perhaps doubtful, and unimportant; if the defendant's construction is the true one, what will be the issue? But it will be very material if our construction is the right one, as guilt is charged home and fixt on him; if his construction is right, it by no means acquits him; and it will not ultimately determine the case.

Previously to my entering further into this business, I will consider the causes and motives which produced the Acts. I will not read them, they have been already repeated, no person can be better acquainted with them than the Speaker; it will not be controverted that the Act of 1785 was enacted as a temporary provision for the payment of interests, the Act of 1786 was passed on the failure of the Act of 1785 for the same persons and had the same general object in view, and brought the Act of 1785 into execution.

I can see no reason why the Legislature in 1786 should make that perpetual, which in 1785 was temporary. There is neither reason nor equity for it; if equity did not require it, there was no reason to grant it. This is prostrating the principles of justice; the Legislature would not unnecessarily encrease its own burthen.

The Gentleman's reasoning, who opened the defence is somewhat singular; he says it became "an equitable claim," so far I agree with the Gentleman. But, Sir, will the gentleman go on, and say, that the contract was not as great to the inhabitants of all the other States who have been creditors of the Union, more equity

was not due to the creditors citizens of *Pennsylvania*, than to the creditor citizens of other States ; if the premises are admitted, the consequences can't be avoided.

Equity is not partial and would embrace the whole, this is clear reasoning, he cannot deny it.

The Act of March 1786 did not, at all events, pledge the public faith for the redemption of those certificates in money ; if then it is viewed in this light, why did the State receive the Continental certificates and give their own certificates in lieu of them ? The object of the Legislature was to make a substitute. If *Pennsylvania* did not take the certificates, and was to pay, she might do it at her loss, as she could have no claim on Congress. This is confirmed from general opinion, and their subsequent views.

If the Treasurer had paid off the Continental certificates they could not issue the New-Loans ; and for this purpose *Pennsylvania* chose to take in the old Continental certificates and issue new ones, so that the commonwealth might at her option be the creditor of the Union, or debtor to her own citizens, by returning them to the original holders ; in the mean time to settle and pay the interest was the intention of the Legislature : It is manifest, and confirmed by the opinion of every person conversant in the transactions of the Assembly, and by the public Acts.

One circumstance of great importance is to be attended to ; that is, the margin of the New-Loans and the reference to the Continental certificates ; this provides how the debts were to be secured, and the memorandums made in the same.—(*Here he read a New-Loan certificate.*)

This margin was of no consequence unless they wished to return the New-Loans. We here look for the intention of the Legislature, and not for the negligence of the executive officer. Was it of consequence to pay in cash at all events, full interest on depreciated principal ? this was not sufficient for it might have been settled at the issuing, why not at the time reduce the
certificate

certificate and give the whole amount when reduced by the scale. If a purchase, it was worth just as much as the value of the certificate's nominal amount of principal and interest.

Another reason and a better one than the construction of the law, is the intention of the Legislature,

The preamble of the Act of March 27 1789, calls it a temporary provision, look into the preamble of that Act, is a Legislative construction important, relying on the margin and memorandum in it, does all this weigh nothing?

Was it manœuvre in the Legislature? it is too disrespectful, too indelicate to suppose, out of the whole I find that the Act of 86 took the certificates into the custody of the state and that they were only to pay the interest; if otherwise they would have found a fund to provide for the payment of the principal, they knew at that time the funds were precariously in their hands, if so, it would perhaps be wrong to contend that nothing more was intended than a re-exchange by the Act of 1786. Therefore the law of 1789 *repealed nothing*; but carried the Act of 1786 into effect.

The construction of the law of 1786 is much more certain and important. If we chuse to take back our certificate at any time, we shall have a right so to do, to do away these they enacted the repealing law of 1789. The question now is not whether the law is right or wrong, but what was the *intention* of the Legislature. If the law was right, it does away most of the difficulty, the Act of 89 is an Act of much importance, of clear and certain construction, let us enquire what was the intention of the Legislature, not whether it was constitutional or not, the law is right or wrong only as the Legislature intended. After we shall discover the intention we'll enquire if open under the Constitution, and whether obligatory as a law is another question.

The construction of the defendant is so contradictory, so distorted, the *English* language can hardly find a definitive idea to correspond with it, he hardly knows
what

what answer to make, every thing he advances is directly opposite to what is mentioned in the Act, so obstinate is every part of it in favour of the prosecution ; and he is obliged to run counter to every expression in the law ; if the Act of 1789 designed only to *unfund the debt*, it is equally unjust with destroying it, it is different not in principle but in degree. If it is so, for what reason ? It is alledged they could not destroy the claim, is it not equally a breach of contract to unfund as to destroy it, truly equal ; why unfund the *principal* that was never funded if the reasoning of the Gentlemen be right, they should have followed wherever it led them ; was it not equally so to subtract the fund ? What did the law of 89 do ? They say it had no effect, it neither destroyed nor annihilated the operations of the former Acts, yet the defendant must admit that the state committed a fraud in unfunding the debt, the provision was repealed, yet they say it was altogether compatible with the law of 1786.

If the alienation of the funds to the General Government had been the reason, was not that surrender to be perpetual ? Did they expect a return of the funds ? If they were to pay the interest, why not the principal ? Where were the funds ? Where was the debt ? It either proves too much, or it proves nothing at all ; it embraces both principal and interest, or only principal, and excludes the interest. If this is not broad enough for them, consider only for a moment the intention of the Legislature in passing the Act.

The declaration in the Act of 1789, proves they intended in 1786 to make a temporary provision.

Could the Legislature labour a preamble declaring their intention, if they did not mean to carry that intention into effect ?

The Legislature expressly says, the payment of the said debts ought to be from the Treasury of the United States, and not from *Pennsylvania*. A construction in the Act of 1786, to abolish the same Act, if there is no reason for doing away the Act of 1786, why labour
three

three or four pages; to do what they did not intend to do.

Yet if the preamble is read, no man will doubt that they did intend to repeal the law, and possessed the right to do so; look further into it, you'll find the words "*certificates*" "*reasonable*," &c. there.

In fine, that the debts, not interest, is to be paid by Congress; there is another construction of the Act of 1789, almost too ingenuous to be admitted and not easily understood, operating not on what is done under the Act.

In the case of the North-Carolina certificates there was no Act to repeal, as the certificates had issued fraudulently.

It is a contradiction in reasoning and almost in terms, do they provide that the principal shall be paid by the State of *Pennsylvania*? Perhaps the Gentlemen would have found no Act to destroy, when they were not issued by any Act. This long Act of 1789 was not made for nothing, the Act of 1786 was completed in 1788. Therefore the Legislature in repealing the Act, meant to knock away the foundation on which they stood.

Here the construction is too artificial to be credible, the defence is at war with itself. First, that it did operate on the certificates, 2dly, It did not operate. This is an invariable rule of all laws, that all parts should be construed so as to stand and no part perish.

The defendant's construction is too fine spun to be strong, it breaks asunder, by another it is held different still, it is so various that there arise three contradictory modes, but truth is simple and uniform, there are various accounts, all simple and consistent, if these are true, they are all the creatures of fancy; they could not repeal the first and second sections of that Act, and therefore could not provide for the payment: these are invisible entities of reasoning, we need a microscope to aid our intellectual optics to see them. The Assembly could not intend what they could not understand, where is the law which directs payment? It proves the reverse

of what was intended, this is the reasoning the defendant is driven to, if the law proves it, they will avail themselves of it, for my part I can't think it was the intention of the Legislature, the majority never spun thus finely this creature of metaphysics by the Act of 1789.

Can a man have an intention to do what he does not understand? the exchange being optional does not serve the defendant, it conforms to our statement. The option to re-exchange is no objection to our construction, "*Many* may be desirous," it is therefore true, that it is optional with the holders, it is therefore consistent with my explanation, and perfectly consistent in itself. Take the whole amount together, it is equity, it is justice. We make our option, which is no more than this; come and take your original certificates, we were never bound to pay you in cash, you may come and take them if you please; it was not necessary to make a law to compel them to take their certificates: It was only this, that if they did not come the obligation on the part of the commonwealth was done away, we are not obliged to pay cash, we will not pay cash, we will perform our contract, you may have your certificates, they were never demandable in cash, they were never a claim for cash, they were a claim for the original certificates for which they were exchanged, they are no claim against the government.

That subsequent laws called them a claim it is true. They were a claim for certificates, the defendant's object was to shew a law to justify him; but this reasoning proves there is none, the first section did not provide or payment, and the subsequent ones were repealed. That these New-Loans were contemplated as claims or receipts is undoubtedly true, if we would deny this, we should commit an outrage against common sense; this is corroborated by the maxim, that we are not to create a being to be destroyed, they knew such positions were not supportable: Much reasoning and paper might have been spared: If our construction is the right one, they were a claim for the original certificates; one of the
Gentlemen

Gentlemen says, that the providing to pay in certificates is a confession that they were a claim for cash; they were a claim, that claim was merely for re-exchange; but not for cash.

The provision for exchange is no acknowledgment of debt. Another reason must meet us very forcibly, that the law of 1789 is void, as being against the constitution of the United States, and impairing the validity of contracts; it is not so, if our construction of the law of 1786 is right.

But let us suppose for a moment (being willing to put it in every possible point of view) that we are wrong, that it was an engagement at all events to pay cash, this is taking the highest possible ground contended for.

I do not mean what is contended for on the other side, for it appears a little singular, that the constitution of the United States should herein impair the obligation of contracts. If the Act of 1786 had made an absolute debt, its repeal would not be contrary to the constitution, the section only means that a state should not establish iniquity by law.

It was a mere act of favour by the State, or else it might be understood that the state made laws, for carrying into effect the breach of contracts. Take your New-Loans for the Continental certificates. If it means more than this, it must be that the very letter and terms of the contract should be carried into effect; if so, a State could not establish a chancery jurisdiction, which says, penalties shall not always be exacted.

Nor statutes of limitations, a thousand pounds payable on demand, is as justly due after four years as before; the four years expire, and the contract is not performed; yet it is a bar pleadable and no injustice.

Let us advert to the statutes against usury, giving damages instead of compelling a specific performance, and a contract to pay 12 per cent. if it were not for the law would be a contract; the law says it shall be no contract. Is this impairing the obligation of contract?

tract? this compels a person to receive what he did not contract for; are these against the constitution of the United States? where justice is done the contract is answered.

If the construction of the law must be literal, giving damages for specific articles, such as to deliver lands instead of cash, must also be a breach of contract: the specific article should be given, the Act of 1789 now under consideration, says take your certificates instead of cash; these observations are all unnecessary, because they go on the foundation that all New-Loans are payable in cash.

But to give the Gentlemen every thing they want, admit for a moment that we're wrong, this contract is unfair, suppose it is impaired, another question arises, who is to say it is impairing the contract, where is the proper judicature? Who is to be the arbiter between the State and her own citizens? This is a serious consideration; *Montesque*, *Locke* and other writers will oppose them here, the power of making laws is the supreme power of the State, is there a power superior to the supreme power? If the judges have this power, it follows that the supreme power is controlled by an inferior power. If courts cannot, the Senate cannot, both as a court and a part only of the Legislature.

This is a very important question, there should be some important judiciary, it is a complex question, the constitution is silent on the subject. We must arrive at some period, let us proceed to the end of the chain, another Legislature to judge the former, another to rejudge the latter, and so on to infinity.

Can the Senate rejudge it, being only one branch? the Legislature of the State has the supreme power, can any individual enjoy it? shall we leave it to a jury to determine? they judge of facts, this is uncertainty, and contradiction, shall every petty officer arraign his master? shall any man vainly imagine that he is wiser than his representatives? language of this kind hath been held,
 nay,

may, hath been pratified. This is rising against the organization of society.

If he decided wrong, he decided at his peril ; here it is contended is the check, the judiciary are to judge ; but this brings us back again, the judiciary in that instance would sit above the Legislature, the people only are superior to the Legislature, the Legislature is amenable in their representative capacity to the people, but shall a jury judge ? Do juries represent the commonwealth ? They are not the Representatives of the people, their office is to judge of facts and evidence, not to judge of the constitutionality of laws. If they are to be the ultimate criterion, it is void to day, because a jury said so, it will be in force to-morrow, if a jury shall say so.

There is a sufficient check on the Representatives, it is this, they are amenable to their constituents, their sessions being only temporary, their doings may be repealed, until then it is a law ; they may repeal a law orderly by subsequent representations—No power on earth can exist superior to the Legislature of the State, except what exists in the People, it does not exist in the Judiciary, not in the Senate, nor in Juries. They will, if they disapprove, choose others who will repeal obnoxious laws. If they mis-judge, they are corrupt ; they will again choose others ; the power is less dangerous here, if they refuse, the People may recur to their original state, dissolve the social compact, untie the knot, and redress every mistake. Here is an evil but a less one ; this free agency in man, this torpid debility, this “ *vis inertiae* ;” the former is the fever, the latter the death of patriotism.

I have been the more particular in this instance, as there are two important points to be considered, that if these certificates were not subscribable, they were not redeemable, although the reverse of the position is not true ; if the servant is to judge of what his master does, then the defendant is to adjudicate between the State and the holders, there is no situation so unfit at his to

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decide ;

decide ; the Comptroller assumes a right to adjudicate, he buys up all the New-Loans, places himself in the shoes of one of the parties, and then determines he is to be paid ; this is the ground on which this judge stood on this question between the State and the People.

But still disposed to suppose every thing credible ; let them suppose us still wrong ; there are yet ample grounds for the conviction of the defendant, if they still existed in the form of debts, they were not subscribable debts and payable in cash, it was said that these were, by virtue of the Act of Congress, subscribable ; situated as these certificates were, it was out of the power of Congress to take them, and to charge *Pennsylvania* with their amount in adjusting the settlement between the United and Individual States : The provision was only for such as the State acknowledged to be debts payable in cash.

They were only acknowledgments of debt. The Secretary of the Treasury so understood them, we will go on broader ground than this, and say, if they intended to pay such, it would be completely out of their power. The State held the Continental certificates ; Congress could not say, we will not pay the State, but pay the holders of New-Loans. The Act of 1789 declares the dissent of the State.

It is true *Pennsylvania* owes *A.* because he holds New-Loan certificates, and the Union owes *Pennsylvania*, because she holds original certificates. It will not be contended that Congress designed to pay both ; then could Congress pay the holders of New-Loan certificates without the consent of *Pennsylvania*, and pay the State too ?

The subscribing New-Loans implies they were not to be exchanged, and makes the State a creditor by virtue of having the Continental, without the consent of *Pennsylvania*, Congress could not assume the New-Loans and refuse the payment of the Continental.

Congress must previously authorise a power to determine the New-Loans to be a debt, before they could assume

assume them. This would amount, to decide a case between a State and her own citizens.

The Supreme Court refused to decide it. The Secretary of the Treasury never would decide this, if it was to be decided by its nature, none are competent but the people, who might recur to original principles.

Congress could therefore make no such provision, if this is true, the New-Loan certificates were not subscribable to the loan of the United States.

Thus, I have been willing to descend, step by step, from that ground on which the prosecution rested, to prove the charge against the Comp. Gen. is well founded, and his defence not maintainable. I will descend one step lower, and admit that the New-Loans are assumable, yet the defendant is guilty in the true sense of the articles of impeachment, and upon every principle of justice, although no gentleman will agree that Congress, the Secretary of the Treasury, or any other person had a right to decide on their assumability.

It was the interest of *Pennsylvania* that the Act of 1789 should be complied with. They viewed themselves bound to pay 20s. in the pound. This business was committed to the Comptroller-General, and he had the care of making the bargain. Is it just in him to take measures to defeat this trust? It was his business to promote it; he opposed it.

Has he not taken every dollar from the Treasury, which he has put into his pocket, and this after the bargain was completed? She committed the management of this transaction to her agent, the holders of New-Loans were to apply to him for re-exchanges, he was the agent, nay, call it more, the commonwealth made the offer, and appointed Mr. *Nicholson* to complete the re-exchange. Is this faithfulness in an agent? Did he fulfil his trust? Does not this look like perfidy? Did he take pains to procure exchanges? When persons offered to exchange and surrender, did he not prevent that exchange? Did he not after they were lodged in his hand as agent, and Comptroller-General, purchase

chase and put them as Mr. *Nicholson* into his pocket? And if they had been so exchanged, could they have been redeemed? After the parties had agreed to take the offer of the State from this officer entrusted to make such bargain, and by which the State would gain the difference in the exchange; he clearly had no equity to put this difference into his own pocket. After the parties had consented to carry the exchange into effect, he refused to deliver the Continental certificates, he sent a line offering to take and buy them himself; nay, he actually purchased them, after which he subscribed them to the loan of the United States, and procured their redemption at the State-Treasury; so that all construction is out of the question.

I ask, if guilt is not irresistably proved on Mr. *Nicholson*? Perhaps much less than this would be criminal. Whenever a person was willing to sell a certificate, every such person willing to exchange his property, but was prevented by Mr. *Nicholson*, even in the streets, by which exchange it would be the property of the State, but had been not only put into the pocket of the Comptroller, but taken out of the Treasury of *Pennsylvania*.

It is a little singular that the ground on which the defendant rests his defence, is by doing equity in opposition to law, and being anxious to defeat the views of the Legislature, that equity should be done to the holders of New-Loans, by procuring for them 20*s.* per pound; instead of this equity, we find Mr. *Nicholson* chose to make a bargain, and to take this equity from them, and the means of doing it in like manner is wrested from them, lest the State should take it. This is crushing equity to death; this aggravates the charges, to deprive them of 20*s.* in the pound, law or no law. If Mr. *Nicholson* knew it, it was unjust, he defrauded the State or the party; where he took this equity from the State, he defrauded the public, when from the holders he defrauded the holders. Where then is this equity?

It hath been stated, but not much relied on, that the abstract of Mr. *Nicholson* was not certified, *genuine* and *assumable*. This is a mere quibble of words, this is the Pharisee in judgment. We are here to do justice, an offence is committed, he is guilty, if the evidence is sufficient to support the charges, the essence is not in writing a word, and adding *J. N.* at the bottom, a deceit had been practised, the crime was not in the certificate, but in the deceit, the State was defrauded, the deceit is proved if the evidence is sufficient to support it; his abstract was in his own hand writing, he deceived the officer who called for the certificate, he deprived the commonwealth of the money which he pocketed at her expence. The substance of the charge is literally true, and the same is proved and supported.

It is charged that he certified a number of New-Loan certificates to be subscribable, the same is literally true.

The charge is proved, because he certified others, and that is equal to certifying his own. I will dismiss this subject without any further animadversion on this aggravating species of criminality, trusting that when the Senate shall pronounce him guilty, they shall render that justice to their country which is their duty to do. Adjourned to 4 o'clock this afternoon.

In the minutes of the House of Representatives the following entry is recorded—

“ In conformity to the resolutions of the 25th day of February last, the House resolved itself into a committee of the whole, in order to attend the trial of *John Nicholson*, Comptroller-General.

“ The Speaker quitted the chair and Mr. *Wynkoop* was placed therein.

“ The committee of the whole then proceeded to the Senate-chamber for that purpose.

“ After some time,

“ The committee of the whole returned to their own chamber.

“ The Chairman left the chair, and the Speaker resumed it.

“ The

“ The Chairman then informed the House that the committee of the whole had attended the trial of *John Nicholson*, Comptroller-General.

“ The committee appointed to manage the trial of the articles of impeachment against *John Nicholson*, Comptroller-General, reported further progress, and that the Senate would proceed in the further hearing of the counsel at four o'clock this afternoon.”

Same day, 4 o'clock. P. M.

THE Senate met, having adjourned the Legislative business for the purpose of sitting in their judicial capacity. The House of Representatives also attending.

Mr. DEXTER,

Rose and said,

I endeavoured in the forenoon to prove my first position, that *the Comptroller-General caused New-Loans to be subscribed, which were not subscribable by law.*

The Act of March 1789 shews the Legislature did not mean to unfund the debt, as the principal never was provided for, therefore it was unnecessary to repeal what never was enacted.

It is contended by the counsel for the defendant that the interest only on the New-Loans was attended to, and considered. If the interest was only to be paid, why introduce the word *principal*, which was never funded at all? We will now attend to our second division, which is, *That he caused New-Loans to be redeemed, when by law they were not redeemable, and thereby had broken and violated the Constitution of this commonwealth.*

That he caused New-Loans to be redeemed, that he certified them to be so, and that that certificate was given officially. will not be controverted. That this fiscal arrangement by his certifications, had the effect of
drawing

drawing the money out of the Treasury of *Pennsylvania*, will not be denied.

The question is, Whether there was, or was not a law :

The Act of the 10th April 1792, is much relied on, to justify him. (Here Mr. *Dexter* read a part of that Act.

It is agreed that the second section is not extensive enough to cover New-Loans, and for the payment, redemption and discharge of all the certificates of that description.

It is agreed that interest is not payable on New-Loans, as it is conceded that this expression does not cover New-Loans, and as no interest was payable on them, it is contended that in a part of the 6th section they are included, assuming the New-Loans as subscribable, New-Loans are not mentioned, and yet they are subscribable, and if subscribable, they must be redeemable, because subscribable certificates are to be paid; but all the state and continental officers agree they are not subscribable, and consequently not redeemable. (He then read the 6th section). "The holder of a certificate or certificates, *subscribable* to the subscription," &c. If they are not subscribable, it cannot be within the purview of this act, it is well understood from the complexion of the law, that whatever is not subscribable cannot be redeemable, and whatever is not subscribable nor redeemable, cannot be included in this section. Whatever might have once been the opinion of the Comptroller-General, it is evident it never was the opinion of the law officers of the state of *Pennsylvania*, nor of the Attorney-General of the United States. (Here Mr. *Dexter* wanted to lay his hands on the letter of Mr. *Randolph*, page 81-2, but could not find it) and he added, We need not recur to the unanimous opinion of the officers, the laws are here, the Senate understand them, and will judge; that paper ought to have been here; if the certificates are not redeemable, then all the reasoning of the gentlemen will fall to the ground, because they are not subscribable to the loan opened by Congress.

Admit that the New-Loans were subscribable, still they

they are not redeemable. The gentleman who opened the defence, agreed that the fund had not been provided for the redemption of New-Loans by the 6th section, but by the 2d. (Mr. *Tilghman* observed, The gentleman did not attend to my statement. The sixth section is more extensive than the second. The fund by the sale of 3 per cent. stock, was not to cover New-Loans.)

Taking this to be true, the object of the defendant is not obtained, and it is clear no New-Loans are redeemable; but recourse must be had to another fund, nay, the fund for claims and improvements they say, covers it; the defendant's warrant and certificate, prove the contrary; these are raw troops pressed into his service; this is a strange departure of the Comptroller-General's plan of defence; his counsel shift their ground. The Comptroller-General committed the fact, and retained counsel to find other laws for it, but those laws are confessed to be of no use. It is said New-Loan certificates were a debt by the Act of 1786. Could the Act of 1792 make them more than a debt? But the Comptroller being determined to get a fund to draw his money from, and finding he could not succeed in drawing his cash by virtue of that law of 1792, changed his opinion, and his counsel procured him another fund. (Here Mr. *Dexter* said, If I am not right, they will put me right. Mr. *Lewis* said, *You're wrong this long time, but go on.*) The funds for claims and improvements should be made use of; this was done by the Act of 1791. This is too remote for discussion, fixed by its history raised per Act of 1789, and limited to £. 10,000 for claims and improvements. (Here Mr. *Bradford* interrupted Mr. *Dexter*, and said, *The Act of April 7th, 1791, created the fund, and did not limit it.*) This fund without any particular appropriation only to provide for claims and improvements, and without any provision for minute occasions or any occurrence which may happen during the recess of the Legislature; why is this called up? it is a confession of distrust, it is peeping out of the window.

Let

Let us take the useless Act of 1792 out of the question; the Act of 1786 and 1791 are sufficient for the defendant.

The New-Loans are said to be a claim, therefore it is said to be within the act of 7th April 1791, are not unfunded depreciated debt equally within it? There are no debts but are claims, if they existed at the time of creating the fund, they are all included in the fund for claims and improvements. These were for objects too various and minute for legislation: this transaction must be unconstitutional; if thus general, why not a little zeal in the defendant? By the law of 1789 the defendant acquired wealth, and gained money.

It is argued that the act of 1789, stopped interest on New-Loans, notwithstanding, by this means the Comptroller-General got interest. The gentlemen will not contend, that New-Loans are one of the objects.

When any money was drawn out of the Treasury, the fund was particularly mentioned, that such a warrant or claim was payable out of such or such a fund; therefore it especially behoves the defendant to shew out of what fund, the money was to be drawn to satisfy his demand. This act goes to shew what shall be paid out of the claim found by the act of April 7th 1791. This general clause covers all warrants hereafter to be drawn by virtue of any law or laws, &c. Was this a claim provided for? It is clear there was no appropriation; consequently the Constitution was broken. This sweeping clause (6th section) cannot cover so important a demand: By the law of 1786, the New-Loans are a debt in some shape or other; by the law of 1789, they were made no longer payable in cash, it was agreed *that the interest was not to be paid in cash*; the principal was never funded. This is a blind general clause, altogether incapable of altering the conditions of the New-Loans.

That the principal and interest of the New-Loans should be paid, but still I misunderstand them or they are mistaken, in saying that the Act of 1786 created a debt. The interest is not funded by the law of 1789.

If an appropriation to pay by the law of 1789, why introduce it by the Act of 1792? If the Act of April 1791 provides for it, and a fund competent for its discharge, why is the Act of 1792 sought for to make it more than a debt? This is calling in a law, which gives it no additional strength, their own consciousness betrays their faithfulness to their client, they are convinced that their proof is not sufficient to support them; this is manifest, though not expressed by them, it would be prudent in them to close the door of secrecy on this distrust. Nothing can be done by the law of 1792 if they are right in their construction of the Acts of 1786 or 1789.

It will not be contended that the Act of 1792 made the New-Loans a debt. If the law of 1792 is useless, take it out of the question; having taken it out, you apply for payment by the law of 1791.

If right in this reasoning, it will be admitted there was no fund, and consequently no appropriation; and therefore the second charge is fully proved, and the Constitution of the commonwealth was broken by the Comptroller-General.

That there was an appropriation by the law of 1792, for the redemption of debts, is evident from the second section. What is the Comptroller-General's language? He says, although the Legislature say by the Act of 1789 that these certificates are no debts, yet he says, *A. B. C.* are creditors of the commonwealth by the Act of 1792. I know the state owes these people, I will determine, I will take the money, I will pay it to the holders of New-Loans, I will go further, I will purchase this equitable claim myself, having the power, although the agent of the government, I will purchase it from the holders by virtue of my official authority, and retain the money by virtue of the Act of 1792.

Is this the language of a faithful agent? On what principles of equity is this justified? Is this justice to the New-Loan holders? I will no longer detain you on this second division.

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I am now come to the third general question, that is, *Has he not appropriated to his own use, New-Loan certificates which had been surrendered to the commonwealth by the holders; and should have been cancelled?*

That the Comptroller-General, as trustee of the commonwealth, had done this, will not be doubted; our evidence however on this point is not now as complete as it may be, we expect the testimony of *Hans Hamilton*, but there are other evidences, *Biddle* and *Oldden*, by whose testimony the same imputation is fixed on the conduct of the Comptroller-General.

The testimony of both are similar, both applied to Mr. *Nicholson* to exchange, both brought the New-Loan certificates to be exchanged, one of them filled up a blank exchange, they manifested their consent to re-exchange, no expectation ever to receive back their New-Loans again, this is a strong evidence of their intention to re-exchange, these were by all principles of justice surrendered to the commonwealth, and ought to have been cancelled; the property was shifted from the holders to the State, for the express purpose of being destroyed, if he should have delivered the certificates to the original holders, it would be perfidy in the agent.

We are told with confidence, that "the charge is a mill-stone, the evidence as light as a feather." They are much mistaken in the merits of this controversy; the property was not in the original holders as soon as the proprietor reached it to the agent of the commonwealth, the same was completely shifted from the original holders, not a doubt can remain of their being liable for the holder's debts.

It will not be contended that if two parties agree to exchange commodities, and they agree on all the terms, the bargain is completed. One says, here, take my goods, I will call to-morrow and receive my articles. The property is shifted. If these general principles are established and admitted, if the case before the Senate be an exception to such general principles, it becomes their duty to shew it. This is not a bold assertion,

tion, but authority which is acquiesced in ; the agent was ready, the holder was ready, the party brought the certificates to the agent, the exchange was proposed to the Comptroller, the agent had possession, it was in the custody of the commonwealth, an express agreement, "give me the original certificates"—nay, more, the exchange is made in writing. I will call to-morrow or when you can look up the original certificates. If this was not a contract for New-Loan certificates, the government had no original right to issue them.

The holder had a claim on the State for the amount of his certificates, and no dealer in the market would doubt, but he had parted with his property.

What right, then, had the Comptroller-General to make proposals for certificates thus deposited and disposed of ; and to appropriate them to his own use ? The fact is, there was delay. The Senate will judge of the intention of the officer by the application : The certificates being thus deposited, the bargain was completed ; he purchased them from men who held the property, not the property of Mr. *Nicholson*, but the property of the state of *Pennsylvania* ; and to give a reason why he did so, he produces neither reason nor authority for his acting in this manner.

But there is another case still stronger than that of *Oldden's* or *Biddle's* ; and that is the certificate of *Blair M'Clenachan*.

It is true the matter is not perspicuous enough, but it is true enough to satisfy certain facts, to wit :

It appears *Blair M'Clenachan* held such a certificate, he never sold to Mr. *John Nicholson* it is true, he sold to others ; 'tis also true, and possible, Mr. *Nicholson* might have bought from others ; if a fact, it is capable of proof—and the weight of that proof rests on the Comptroller-General.

It is incumbent on him to shew how he came by it ; he has subscribed it, it is his duty to point out how he became possessed of it, we have paid it, it is similar to stolen goods found on a person, he must account how
he

he came by them; this may be said to be less hard on *Mr. Nicholson* than on a felon, or on a common vagabond, who knows nothing of accounts; this is not the case with *Mr. Nicholson*, he is a person of information, of books, and of accounts, knows with whom he deals, and keeps a diary to assist his memory. (*Mr. Lewis gave him here a loud boarse laugh, for talking of diaries, when none of them would be admitted as testimony.*) Why! he says so—he began to keep a diary in March 1792.

It is a fact that he had this certificate, the amount of which is £.3275:19:4, he can trace a transaction of so much importance, the name cannot be lost in the mere hurry of business, if the person exists upon earth, *Mr. Nicholson* can and ought to produce him; in some instances it is usual to give a bill of sale of such certificates.

And further, *Mr. Nicholson* is in possession of books and official documents, if it is not exchanged, where are the Continental certificates for which this was issued.

Can the defendant shew them? Let him turn to his books and shew them; will not the books be sufficient to clear up this point? and to shew the amount on hand and not delivered out, or how he has accounted for them, if the books are kept as they ought to have been, it must appear from some of those official documents in the possession of the defendant, if no other answer can be procured, but that he is not bound to prove it, it is in vain to make any enquiry into the conduct of a public officer.

If the certificate had been consolidated*, still it is in his power to shew this by his books†. Finally, if we are to prove the charge, what other evidence can we produce, or can be expected of us? We have proved the facts, the defendant must prove his mistake. It is his duty to shew, when and where he purchased it, and what became of the counter parts: But if he does not, the charge is proved upon him, and the evidence is strong and irresistible.

I am

* It was consolidated. See *Mr. McConnell's* evidence, page 186.

† The books also shewed it to have been the case.

I am now come to the fourth general question, to wit: *Has not the Comptroller-General done all this, knowingly and corruptly, to make unjust gain, betraying the trust reposed in him, and traded on the public confidence?*

Having proved the facts which were breaches of laws, it is incumbent on the defendant to prove he is innocent, that it was done through mistake and innocently, that he acted with an honest intention, and that this *killing* was not maliciously done; if the Comptroller will not prove this, there is no doubt of his knowledge and criminal intentions. Can any doubts exist of what a man tells us in the public records, after the labour of many days, should he say that he did not know it?

In these records he has explicitly shewn the true construction of those laws, his statement in 1790 is conclusive, (here Mr. *Dexter* read the minutes of 1790, page 389) that the New-Loans amounted to a certain sum, which were claims against the State, but by the Act of 1789 were excluded from redemption. (The whole being taken, it reads, "*redemption*" by the Land-office.)

These claims were only claims for certificates (page 395, same date) by the Act of March 1786 they were excluded from the Land-office, in the same page are most material passages, but for what purpose? They were claims not for money at as early a date as December 1790. I have urged this confession as a reason, and a number of circumstances strongly apply to confirm that this was the true construction, that the Comptroller-General and the other officers of government concurred in the same opinion, that New-Loan certificates were not subscribable to the loan of the United States.

It is said the Secretary of the Treasury was of that opinion, when he was better informed, he renounced his former opinion. The consideration of the two Acts of 1786 and 1789, together with the consideration of the Constitution of the United States, never came before him for decision in a "*prominent point of view.*"

The Comptroller-General was not mistaken in his views.

views. Is he to shelter himself under the opinion of the Secretary of the Treasury? After his partial information to that officer, the Act of 1786 had been submitted by him to *Hamilton*, the Act of 1789 had been retained, he knew it, and stated in his reports the debt as a claim against *Pennsylvania* as they operated in the way.

Here is an important question, the Comptroller secretes the Act of 1789, is this opinion a proof of innocent intentions? it proves the reverse.

The Register-General never knew that any New-Loans were subscribed, until Mr. *Nicholson* had got his money; he went to Mr. *Smith's* office in a surprise, a circumstance so *singular*, to know whether it was true or not.

It is also true, that the Comptroller-General did not know what was the opinion of the Register-General; a conversation took place, same time went to *Smith's* office. The Register gives his reasons, namely, because he thought it would be to the interest of the State. Therefore he gave it in the integrity of his heart.

Mr. *Addison* and some other respectable gentlemen are named, as having subscribed New-Loans. I doubt this to be evidence in the present case. Was not the opinion of Mr. *Addison* founded on the opinion of the Comptroller-General? Did not the Comptroller broach it? Mr. *Nicholson* suffered others to act to keep himself in countenance. Is that opinion sufficient excuse? Had it ever been the same before? No, until the Comptroller rendered it fashionable, there is no evidence of any person entertaining such an opinion before the Comptroller-General, who should have saved to the State the wealth that he is now possessed of. This opinion would never have been thought of if the Comptroller had not broached it. All the holders would have re-exchanged their certificates if he had not defeated the views of the Legislature.

It is said, others determined to purchase New-Loans before Mr. *Nicholson*. The opinion of Mr. *Nicholson* formed

ed them; some determined before, others determined after. Where is the public officer who has not determined the reverse? They ought to be convinced, as they had been when they had the same opportunity.

It is said the defendant had long before the Act of 1792 the same opinion; it is a mistake, his report made in 1790 clearly proves the contrary, he conceived the design that the New-Loans were a claim, not a claim for certificates, but a claim for cash.

His opposition to the law of 1792 has been much relied on, much credit hath been taken for the secret sources of wealth contained in his plan of finance from pure and disinterested motives. Why did he oppose it? Does it prove his innocence? The Comptroller opposed it; because it would subject the State to the payment of some debts, which the commonwealth ought not to pay. Does not this shew a consciousness? Does not this prove that he knew New-Loans were not redeemable either legally or equitably.

It shews covetousness; to suffer them to be re-exchanged might include an imprudent proceeding. Was he not bound to take no advantage of their imprudence? And he was not bound to uncover their nakedness. This he thought right, and puts the difference into his own pocket; all this under the colour of law. By these principles he took the advantage of the holders with an ill grace. All this is a plain proof of conviction, converting every thing to his private gain. It is possible, nay, it is probable that he conceived the design of opposing the Act of 10th April 1792, from pure motives, for what reason? We say they were afterwards corrupt. There are other parts of the evidence which demonstrate the guilt of the defendant.

The statement of the Comptroller, that New-Loans were excluded in the provisions for claims and improvement, is a proof in point; it cannot be pretended that they are in the law of 1792, it is confessed not to be in the second section, it is said to be in the sixth. Pure motives these! When this officer wanted an engine be-
cause

cause the word "subscribable" can be found in that section.

The complete secrecy is a strong proof of his guilt, bound to communicate with the other officers, which he declined until he actually obtained possession of the money. If the opinion of the Comptroller was known for so many years, why secrecy so many years? He did not receive money to pay it back again, he carried his plan into execution before the Governor, a faithful officer took measures to stop it, the Register was checked in the progress. This is the conduct of Mr. *Nicholson*. This is the meaning of the articles. On all that came before the House, I do not see a clause by which I can be able to find those signs of innocency, he was the officer of the public, he was paid for his services, he was not to sacrifice their interest to his own private gain; his whole course is a sacrifice of duty to gain: he pursued it with a step as steady as time. We have seen the conduct, we have traced the motives of the Comptroller-General; let us take an extensive view, let us compare them with the general principles of faithfulness and honour. As an Executive officer, he was an hand to fulfil the volitions of the public, the Legislature's will was his duty. If we find him going forward in other principles of gain, they are base. Is this faithfulness, fairness and honour, in a country like ours, where the government lives on public confidence? They are shaken by every breath, if they are not equipoised, the nice balance is easily displaced. By this means the corruptions of European politics will destroy our constitution, and false constructions will overwhelm our own politics, and sacrifice the principles on which we built our Republic.

Of all the parts the public revenue ought to be most closely watched; revenue is food which in a diseased state is humour and disease, and becomes the food of corruption. No jealousy is too great to check unbounded power; no jealousy too great to watch un-

limited confidence, in equal systems purity and severity are necessary,

We have been told that great patriots have been sacrificed to popular fury, through clamour and prejudice. Is this an argument against convicting the defendant! Where is the clamour, where is the public resentment? The influence of the respondent is great, more danger of impunity, he has many friends. No comparison between the Republics of antient times and our own, the representation here is judicious, their laws were indefinite; no more similarity between *America* and *Greece*, than there is between their patriots and the respondent. They knew nothing of representations, they knew nothing of the divisions of power, they did not decide by fixed laws, passion was their only principle.

Hence an unjust acquittal is perfidy to the public. I know the Senate have too much understanding to leave their post; the proof is competent to authorise a plenary conviction; if the opinion of the Senate should be different, the Comptroller will not be punished for mal-conduct, the community will be defrauded, the day of acquittal will be forgotten, it will be establishing a reward for crimes, in future no responsibility will be expected, this will be opening the flood-gates of corruption; but consider, they ought to know that you are above them; they will then do justice, as it is expected the Senate will in this case do justice to the commonwealth of *Pennsylvania* and to the respondent, and prevent the torrent of seduction from sweeping away our liberties and our rights. Adjourned.

 The usual ceremony in the House of Representatives, of placing a member in the chair, was attended to: The committees reported to each other their attendance and progress.

I received the following letter from Mr. Dexter, on or about the day of its date; *which is given literatim*—

“ Mr. HOGAN, 29th April, 1794.

“ I ONCE mentioned to you that you must not publish anything as mine in Mr. Nicholson’s trial without first letting me see it. As I have heard nothing from you, I am apprehensive you have forgotten it. I have been so often misrepresented to the public in this way that I cannot bear it any longer, and shall publicly disavow it, if you proceed without first submitting it to my inspection. It is no trifling think to dress a man in a fool’s cap and then introduce him to the public.

Your hb. servt.

SAML. DEXTER, jr.”

Mr. HOGAN.

THE speech alluded to, was not prepared at that time, nor was it put to press before the 22d September following, when Mr. Dexter being absent, could not be indulged in his request: However, I have notwithstanding his threat ventured to give it to the public, and I call upon him to say whether it is not in the same dress he gave it himself; if he should dispute any part of it, I shall be ready to adduce proof that the several parts are in his own expressions.

EDMUND HOGAN.

✍ The Editor has been thus careful in preserving the language, and copious ramifications of the foregoing speech; being requested by one of the members of the House of Representatives not “to lose one word of it:” And another member declaring, that “the 300 dollars,” meaning those given to Mr. Dexter, “were well laid out.” He therefore appeals to the hearers, and those concerned, for the authenticity of every assertion therein contained.

Thirteenth day of the Trial.

THURSDAY, MARCH 13.

THE Senate met; the consideration of Legislative business was postponed; Mr. *Nicholson* and his counsel were at the table, inside the bar as usual; the Court was called, as in page 201.

Mr. BRADFORD rose, and said,

*Mr. Speaker, and
Gentlemen of the Senate,*

THOSE circumstances which have deprived the defendant of one of his counsel, occasion my appearance in this cause. Having been substituted in his place, I wish I were able to supply his loss.

I appear for an officer who has been long in the public service, and, I may add, long a public favorite:—an officer who has been as it were burdened with the public confidence and oppressed with duties numerous, delicate and difficult in their execution. When such an officer is *accused*, the very confidence with which he has been honored begets suspicion; and if he be accused of *peculation*, a jealousy for the people's rights provokes a peculiar zeal in those who conduct the prosecution. That zeal has not been wanting: and the result, I trust, will be honorable both to the House of Representatives and to the defendant. Their committee, in their investigation of his conduct, left no tract unexplored—no office unsearched—no expence spared: and yet, although the defendant has been twelve years in office, they have been able to bring forward only a single charge of *this kind*: and that founded on the single testimony of an unrecollecting individual.

Impressed

Impressed with the importance of the cause I will endeavour to discuss it as well as my strength will permit: and in order to follow some method, the articles of impeachment shall be my guide. They will be separately considered and probably separately decided on by you: and therefore a distinct and separate discussion of them is in some degree necessary.

The first article may be divided into three distinct positions,

1st. That the Act of March 1789, rendered the New-Loan certificates no longer a debt or evidence of a debt.

2d. That he declared these certificates to be subscribable to the loan of the United States.

3d. That this was a misdemeanor, in violation of his duty.

The first of these positions, is the basis of the whole prosecution. It therefore deserves a minute examination: for unless it can be supported, the Colossus which is reared upon it must inevitably fall.—Its importance arises from the Act of Congress of the 4th of August 1790, which makes the sums subscribable to the loan, payable in certificates issued by the respective states “as acknowledgements or evidences of debts by them respectively owing.”

That the New-Loan certificates were at *one time* evidences of a debt owing by *Pennsylvania*, seemed so manifest that it could not be denied; and accordingly the committee thought it necessary to state, that the Act of 1789 had destroyed that quality. They therefore placed this position in the front of the battle: It is our duty to encounter it; and in so doing I will endeavour to prove,

1st. That these certificates were debts of *Pennsylvania* before the Act of March 1789.

2d. That the Act of that date neither *did* nor *could* annihilate the debt.—

The first of these is a principle conceded in the articles of impeachment. When they state that the Act rendered

rendered these certificates *no longer* a debt, they implicitly admit that they *were* a debt before the Act was passed. The learned managers, also, have occasionally admitted it; but as their counsel have told us that it was not a debt—but a temporary exchange of certificates—that they were not absolute contracts for the payment of money—but mere receipts to enable the holder to get back his Continental certificates—it has become necessary to examine this point.

By a debt every lawyer understands *ex vi termini*, a sum of money due by certain and express contract. Such we hold these certificates to be:—a debt created by the Act of March 1786.

The history of that Act hath been gone into to prove that this was only an engagement to pay the interest as long as the state chose, and not a permanent debt. And it was said to be a mere temporary provision, because it was originally the debt of the United States and not the proper debt of *Pennsylvania*.

It will therefore be proper in this place to mention a few facts which illustrate the history of the certificate—debt of *Pennsylvania*.

When the war commenced it was understood and afterwards expressly stipulated that all expences should be paid out of a common treasury. Congress had nominally the power of raising money but no organ by which they could effectually exert that power. They could make requisitions but could not enforce them: and it has properly been called a government of supplication.—Hence they were obliged to issue paper-money; but that depreciated and large debts were unavoidably contracted.

These debts were for services rendered, articles furnished or monies advanced.

1st. Part of this debt arose from the depreciation of the soldiers pay. Congress in 1786 determined to make up that depreciation, and not being able to do it themselves, requested the several states to compensate their respective troops for the deficiency of their pay. Hence
arose

arose the depreciation debt of *Pennsylvania*, originally the debt of the United States, and still chargeable in account to them. But as soon as the certificates were issued by the state, it became *her own debt* and so it has always been considered. For the residue of his demands the soldier received the paper of Congress; and for services rendered to the United States, he held in one hand his depreciation certificate issued by the state, and in his other a final settlement certificate granted by Congress.

2d. The second species of certificates were those issued under the Act of 1st April 1784. These have of late been called Funded debt—but the greatest part of them were issued for militia services, when called out by order of Congress, or for commissary or quartermaster certificates and other debts properly chargeable to the United States. Here again the state stepped in to assume; yet these certificates are not denied to be the proper debt of *Pennsylvania*.

3d. But the greatest part of the public creditors who were citizens of *Pennsylvania*, held Continental certificates. Neither principal nor interest was paid upon these; and though this was not the proper debt of the state yet she was one of the partnership, and as far as her quota went, was bound to contribute. She was willing to do this: but amidst a general delinquency of the states, she had no encouragement to exert herself for the payment of any but her own citizens—and these she chose to prefer.

The Legislature accordingly made Continental certificates receivable in the Land-Office. They went further, and by an Act of 1783 enabled the Loan-officer to pay *one* year's interest on such of the Continental certificates as were held by the citizens of the state. There were hopes, at this time, that Congress would be authorised to lay a duty of five per cent. on imposts: but *Rhode-Island* refused to accede to it, and the hopes of a Continental provision for the payment of the debt became more distant. Still *Pennsylvania* was unwilling

ling to assume so large a debt as was in the hands of her citizens : But desirous of relieving them, the Legislature directed the state's quota of the annual interest of the aggregate debt to be paid into the hands of the Continental Loan-officer for the purpose of paying its own citizens, until *permanent* provision should be made by Congress.

But this would have left foreign creditors unprovided for : and Congress by their ordinance of the 27th September 1785, disabled the Loan-officer from carrying the plan into effect. This defeated the Act of 1785. The indent system, proposed by Congress, was seen to be delusive ; the creditors suffered ; and the moment was arrived when *Pennsylvania* saw she must either abandon the relief of her own citizens or take the debt due to them upon herself. In such a crisis she did not hesitate, but nobly resolved to assume the debt, to become the creditor of Congress instead of the debtor ; and by interposing her own credit and resources, to save her citizens from distress.

This gave birth to the Act of March 1786. The Legislature determined to open a loan—to receive the Continental certificates as gold and silver—and to give the note of the state for their amount, payable in ten years.—In nothing but its amount did this assumption differ from that of the depreciation and other debts of the United States. The different species of certificates seemed to be equal favorites : All of them were receivable in the Land-office, all of them bore interest at 6 per cent. and by the Act of 1786 interest on all of them was made payable half yearly.

In the assumption of the *Depreciation* and *Funded* debt, *Pennsylvania* became entitled to a credit in *account* with Congress equal to the amount assumed :—In that of the New-Loan debt she acquired a *transferable* credit : in both cases she contracted a debt to her own citizens and the certificates issued were *equally* evidences of that debt.—Why then are we told in such pointed terms that this was not an original debt of *Pennsylvania* ?

Pennsylvania? Is the contract less valid because the consideration is a negotiable debt, and not cash or produce? Certainly not. The engagement was thus, "Transfer to me your certificate and I will give you my note to pay you an equivalent in money." If individuals had bargained so, what court of law or equity would have denied that the note thus given created a debt?—Here the *consideration* was a valuable one—the sum certain—the time of payment fixed—the note negotiable. (Mr. Bradford then read the form of a New-Loan certificate, see page 317.) It has the nature and all the properties of a legal debt; and as to subsequent holders, they had only to look at the face of the certificate, to learn that the state was obliged to pay that debt to *the bearer*.

Again: The Act which created these certificates speaks of them *as debts*. Thus in section II, it directs that the margin of the certificates shall be "sufficient for a memorandum of the essential circumstances of the *debts* to be thereby respectively secured." The same expression occurs in the eighth section.—They are considered as *debts* by the Acts of 28th March 1786, and are so called in all the Legislative proceedings. It was so considered when the Act of 1789 was before the House, and in their minutes it is styled a "debt originally due by the United States and assumed by *Pennsylvania* for the relief of her citizens." (See votes Assembly, 26th December 1786, page 93-97, and November 1787, page 69; minutes 1789, page 77, 78, and 82, &c.)

Before I dismiss this part of the subject, permit me to make an observation on what fell from the gentleman (Mr. Dexter) yesterday. He was mistaken when he supposed that the memorandum on the margin was to be a memorandum of the *Continental* certificates loaned. On the contrary the memorandum was designed to serve *as a check* and to record the essential circumstances of the *New-Loan certificates*, on whose margin it was made. The inference so ingeniously

drawn from it, is therefore unfounded : but the mistake was a natural one for a gentleman to whom this subject could not be familiar.

Thus it appears that the state made a contract for the payment of the debt not only with the original creditors but with every *bona fide* holder. And if the state reserved a right to abolish the debt, where is the evidence of that right to be found? It is not in the law; it is not on the face of the certificate; nor had it a being till the ingenuity of counsel created it.

I here dismiss this point. It is proved that the New-Loans were originally evidences of a debt. 1. By the history of the Act which created it. 2. By the nature of the contract. 3. By the terms of the Act. 4. By the written documents of the Legislature. And, 5. By the articles of impeachment themselves.

I now proceed to prove, *That the Legislature did not mean nor had the power to impair the contract or destroy the debt, by the Act of 1789.*

1. The Legislature did not mean it; because upon a fair and legal construction of the Act, it only operates to *suspend the payment* but does not affect the *existence* of the debt.—The Act of 1786 made provision for the *payment* of the interest—but the certificates issued under it *secured the debt itself*. I use this language because it is the language of the Act.—A repeal therefore of the Act of 1786 cannot affect those certificates. There are no words in the Act under consideration which discover any intention to affect them, to render them irredeemable or to annul the debt.—This is always expressly enacted where the determination is such. It is so in all cases where bills of credit are called in. It is so in the Act of 4th December 1789 (*Dal.* 759) where certain certificates for supplies are directed to be brought in, and are declared after a certain day to be irredeemable. This has always been done when the evidence of the debt was meant to be affected. But in the case before us there is no compulsion on the holders of the New-Loans to bring them
in

in and exchange them. They were left at liberty to hold them, or to exchange them, or to transfer them to others—The debt and the evidence of it remained secure though the funds provided by the Act of 1786 were withdrawn.

But it has been much relied on, “that so much of the Act of 1786 as secures the payment of the *principal sum*,” is also repealed: And it is urged that a refusal to pay either interest or principal is tantamount to annulling the debt.—But it is obvious that this clause affected only the certificate’s *receivability in the Land-office*. No part of the Act of 1786 directed or secured the payment of the *principal*, except the section which made the certificates receivable in that office. There was no adequate fund provided for their redemption, and the hopes of receiving payment in 1796, rested on the *national faith and honour* of the state.—These were the security of the holder and these were not affected by the repeal in question.

That the word “principal” was not inserted with an intention to annihilate the debt, appears also by the history of the Act. The bill in its first concoction and in all its subsequent stages till two days before it passed, was calculated merely to stop the payment of interest. (Minutes Assembly 1789, page 78, 143-5.) If it had been passed into a law in this form, no question of this kind would have arisen: And as the word “principal” appears to have been inserted on a sudden thought, merely to meet that part of the Act of 1786 which made them receivable in the Land-office, it cannot afford a ground for the inference that is drawn from it.

The preamble has also been relied on as proving the intention of the Act. But, without insisting that the preamble cannot controul the purview, it may be observed, that it states the want of funds, which had been diverted to the general government, as the ground of the difficulty: and that it was reasonable that payment of the debts due to the creditors should be provided

for out of the Treasury of the United States.—It was hoped, probably, that Congress would assume them—or, paying the interest to the state, enable her to pay it over to the creditors—and until events should determine, the incapacity of the state to meet the demand required a suspension of the payment. But in the mean time an exchange of certificates was offered to those who chose it.—Circumstances of imperious necessity may excuse the stoppage of payment—but nothing can justify an attempt to destroy the debt.

Again: The debt is so far from being extinguished by the Act, that the Legislature recognizes it by directing the payment of four years interest complete and providing a new fund for its redemption. But they do not *compel* the creditors to resort to this fund. All the expressions of the Act shew that they have an option either to take back their Continental certificates or to rely on the future ability of the commonwealth. It recites that “*many may be desirous*” to take back their certificates—that it is “just and reasonable” to grant it to those “*applying*” therefor, &c.—Expressions which prove that the exchange was discretionary with the creditors.

“But can that be a debt of which the payment both of interest and of principal is withdrawn?” Unquestionably it can.

1. It is plain that the destruction of the interest is not the destruction of the debt. Thus during the war, interest ceased on *British* debts. So on money attached. The interest on the state debts due from confiscated estates are at this moment in that situation. There is no fund for payment of principal or interest, and yet it is certainly a debt. 2. Neither will the annihilation of funds for the payment of the principal operate thus. If these certificates had never been receivable in the Land-office, they would nevertheless have been evidences of a debt. The debt is created by the promise; the means of fulfilling that promise are quite different from the promise itself.—Besides, a debt may exist where

where there are no means of compelling payment. A debt due from one individual to another is not annihilated by a defect of remedy. For instance, when the revolution took place all positive laws ceased; the creditor had no means of compelling payment; but although the remedy was extinct the debt was in force. So in the case of alien enemies; their debts are suspended, not extinguished. A similar point was lately ruled in the highest tribunal of the United States, *Georgia v. Brailsford*. It is the same case in those states where there is no mode of suing the government; tho' they refuse to provide funds for the payment of the principal or interest of their certificates, those certificates are not less evidences of debts owing from them. So the New-Loans being evidences of a debt rightfully created are not destroyed by the withdrawing those funds which the Act of 1786 provided.

It appears to me that the sense of the Legislature since the passing of the Act of 1789 corresponds with this construction. This may be collected from the Act of 29th March 1790, page 784. (Here Mr. B. read the Act and commented upon it.)

From the view already taken of this point, it is apparent that the Legislature did not mean to render the New-Loan certificates no longer evidences of a debt; but there is still a stronger reason for avoiding the opposite construction, which is, that it tarnishes the honor of *Pennsylvania*.—It has been proved that there was a debt solemnly contracted by the state on a valuable consideration. Now what is supposed by the articles of impeachment? That the Legislature intended—not only to cancel this solemn obligation—to violate the sanctity of contracts—to sap the confidence in the public faith, but also to subvert the honest principles of government and violate the Federal Constitution. Sir, it is imputing to the Legislature a crime greater than that with which the defendant stands charged.

All government is instituted for the protection of our natural rights. Property is one of these,—and property

ty in contract is as sacred as property in possession. We have no safety if this can be violated ; and those who think that liberty can be secure where property is not protected will find themselves miserably mistaken.

The necessity of preserving the faith of contracts between individuals is very apparent. If one man should give his own obligation in exchange for another, no court of law or equity would dissolve the contract :—and the constitution of the United States prohibits this injustice in *all* cases. Why should there be a difference made between the promissory note of an individual and of a state ? States are moral persons, capable of duties and obligations ; and none but those who adopt the dishonest refinements of the *Florentine* politician will in such a case distinguish between them. What is it to justice whether the one of parties to a contract be one, or many—an individual—a corporation or a state ? Power, indeed, may be on one side, but power is not right. The naked arm of violence may tear the contract in pieces, but the immutable justice of the demand, remains the same. It is the sacred law of nature, says *Puffendorf*, that the faith of contracts be observed. The most despotic governments are obliged to respect this salutary principle—this voice of the divinity which is heard in every heart amidst all the violence of desire and the clamours of self interest.—But in republican governments the preservation of this principle is essential to liberty. Such at least was the conviction of the people of *America* when they formed their Constitution. They would not suffer so important a principle to be at hazard and solemnly declared “ That no state shall have power to impair the obligation of contracts.” This is at once our glory and our reproach ; our reproach as the evidence of past injustice ; our glory as an eternal bar to such injustice in future. This abstraction of power—this inability to do wrong is more truly honorable to the several states than unbounded authority. I speak not only as counsel for the defendant, but as a citizen who loves his country, when I say ;
that

that the preservation of this article of the Constitution is of the last importance. We ought to watch over it with a holy jealousy—we ought to guard it with unremitting zeal—we ought to resist the slightest attempt to destroy or impair it. Among all the captious exceptions and honest prejudices against the Federal Constitution, no opposition was made to this principle—no amendment proposed by any state. *Pennsylvania* not only formally approved of, but after three years consideration transplanted it into her own Constitution. We there find it placed among “the great and essential principles of liberty and free government.” (Mr. *Bradford* here read the articles in the Constitution of *Pennsylvania*.) Around this every honest citizen ought to rally: and yet this must be beaten down before the defendant can be reached.

At the time of passing the Act of 1789, the Constitution of the United States was in full force. Ought we then to suppose the legislature so forgetful of their duty as to violate it? Is it necessary to fally the fair fame of *Pennsylvania* by a harsh construction of the Act when an honest meaning is easily discoverable in it?

But it is said the Act of 1789 restores all things to their old situation—that this is *equitable and just*—and therefore no violation of the Constitution. To this we answer, 1. That the contract was to pay money not to re-exchange certificates. The United States might as well annihilate their assumed debts in the same manner. A man who purchases land on ground rent might as well insist upon the seller taking back his land and extinguishing the rent; or when farms have been exchanged, that they should be mutually restored. This argument will not hold in common life nor in the case before us, 2. It did not restore things to their old state. The *purchaser* of a New-Loan certificate never loaned any thing and the proffered exchange was offering what he did not wish and taking from him what he chose to keep, 3. Even those who loaned their certificates could not obtain the same certificates again; and if Congress had made
the

the discrimination between original holders and alienees as many expected, manifest injustice would have resulted from the Act. There is no security but in strictly preserving the contract. To pretend, as was yesterday said, that the meaning of the constitution was merely this, "that no injustice should be done by the states"—and at the same time to leave them the judges of this justice in their own cases, is to fritter away our liberties.—Justice is always the pretence; and even the pine-barren laws, as they were called, were passed on the pretence of *Equity*.

It has been said that even a suspension of the payment of the interest was a breach of the contract as much as the annihilation of the debt. But it may be observed that funds for the payment of the interest were withdrawn by the consent of the people themselves; and the inability to pay will excuse the present stoppage of payment; but the obligation of the contract remains. Thus the sudden revolution in the form of our government which abstracted the funds justified a present suspension of payment; and in the mean time a re-exchange was offered to those who chose to look to Congress, rather than rely on the future ability and faith of the state.

But it is said, Suppose the Act were contrary to the Constitution, who shall say so—what judicature has authority to determine upon it? That point need not be much discussed. It has more than once been settled, that the judicial power is invested with authority to determine on the constitutionality of an Act of the Legislature. In countries where they have no formed Constitution the Legislature may be considered as supreme: but here their Acts are *leges sub graviore lege*. It has so been determined in *New-Jersey* in the case of *Craig* and others, v.—and also in *North-Carolina*. In *Pennsylvania* we have often heard this doctrine from the mouth of the Chief Justice, and a recent determination of the Judges of the United States, on the pension laws, proves that they entertain the same opinion. A decent respect for the opinion of the Legislature is very proper

proper and ought to govern every tribunal in a doubtful point; but an undue submission would be a desertion of duty.

But we are pressed with the objection that this is to set the Judiciary above the Legislative. But this is by no means the case. It only establishes the preeminent authority of the *people*. They are above the Legislative and Judicial. To both they have delegated limited powers; and the Constitution is the supreme rule by which both ought to govern their decisions.

The objection is founded on principles long since abandoned. After the truths established by our revolution—and in the blaze of political knowledge which illuminates the close of the 18th century, I did not expect to hear it affirmed in a republican government, that the supreme power resides in the Legislature. It resides only in the people who have delegated certain portions of it to the different branches of government. Properly speaking neither of these is superior—They are in one sense equal and co-ordinate—The Legislature is controuled by the Constitution; and to the Judiciary the people have entrusted the power of interpreting the laws. And as the Constitution is the supreme law, the courts in the exercise of their functions must necessarily determine whether the Acts of the Legislature interfere with its provisions. (Mr. Bradford here referred to and read some passages from *Publius's* letters on the subject.)

It is said that the people in case of a violation of the Constitution have no remedy but another election. If this be true, there is no security that another election will be in their power. If this be true, the Legislature might have been spared the trouble and expence of an impeachment. They might have passed a bill of pains and penalties against the defendant, or erected a torture chamber to oblige him to confess. If this be true our liberties are prostrate at the feet of the Assembly, and a *limited* Constitution is of no avail.—What will the Freemen of *Pennsylvania* say when they find the advo-

cate of the House of Representatives so liberal in surrendering their inestimable rights? or what must they think of this cause which cannot be supported without shaking the pillars of the Constitution?

To enforce his reasoning on this point the gentleman added that he never heard that any power on earth had a right to adjudge a case between a state and its own citizens. Then, Sir, he never read the Constitution of *Pennsylvania* which expressly provides that a state shall be sued as an individual. The position is a remnant of feudal ignorance;—and surely in a criminal prosecution every man has a right to avail himself, before any tribunal, of the shelter the Constitution affords.

I will dwell no longer on this subject. From our examination of it, it is equally evident that the New-Loans are still a debt—and that the Legislature did not mean nor had the power to destroy it.

I now proceed to examine the other positions contained in the first article. They are, *That John Nicholson declared these certificates subscribable to the loan of the United States, and that this was a misdemeanor.* The fact of his certifying or declaring them to be subscribable is admitted, except, that he did not certify this, in his own case; in which alone he could have derived any advantage from it. But no guilt results from this conduct, if it can be *justified* or *excused*. We mean to do both, and contend, 1st. That this debt was by law subscribable to the loan. 2d. That if it was not, it was at least his real opinion;—an opinion honestly entertained by him and many others.

New-Loans are within the description of 13th section of the Act of Congress. Compare them with it. They were certificates issued before the 1st January 1790, by the state of *Pennsylvania*—as acknowledgments or evidences of debts by her owing.—They are not within the exceptions of the section;—nor could they be legally refused at the Loan-office unless they could be proved to be no longer evidences of a debt.—I admit that they must be evidences of a *subsisting* debt;—but we
have

have already proved it to be a debt,—and it has never been paid off, redeemed or otherwise legally discharged. The argument need not be repeated.

But it is said it must be a debt *recognised* by the state. We answer, 1st. That it never was disclaimed by the state; though unfunded, it was still a debt undenied. 2d. If it was really an existing debt, the subsequent acknowledgment or disclaimer of the state would be of no avail. To decline receiving certificates of a disputed debt, was a proper rule in the Treasury, as they had no power finally to decide on it; but their doubts or difficulties cannot affect the creditor's right. The Act says no such thing. Whether the debt be *really owing*, is the only question: If it be, it will exist independant of the will of the debtor.

This assumption by Congress was not made for the sake of the state but of the people. The history of the Act is well known. Congress could not raise money to pay their debts during the war, and the several states were obliged to advance their credit for the United States. The certificates they issued were considered as a Federal charge, and yet in many of the states they were not paid; while in others the state creditor was a favorite. To put these, who were in justice, creditors of the Union, on a footing, the assumption was determined on.—Could a state therefore which might be opposed to this assumption, defeat the measure by refusing to recognise the debt? The very exception of the *North-Carolina* certificates is a proof that it could not. These were disclaimed by that state, and yet an express exception was thought to be necessary to exclude them.

The amount of the Secretary's letter on this subject is, that the officers of the Treasury, who are merely ministerial, take a safe rule in receiving certificates on loan. But this does not preclude an enquiry. A *mandamus* from the Supreme Court may be issued to decide the question; and if the certificates offered on loan, come within the description of the Act, the Treasury officers would be compelled to receive them.

The opinion of the Secretary therefore is not to decide this question. Yet it may be remarked that he did so far decide upon it as to write to Mr. *Smith* the Loan-officer that he could not refuse the New-Loans if the holders insisted on subscribing them. We are told however that the Act of 1789 was not brought into his view; but on comparing what he has written on this subject it is probable that he did see it, though he could not see any such doctrine in it as is now drawn from it. (Mr. *Bradford* here commented upon several of the Secretary's letters which were read in evidence.)—It is true, that the certificates have been *virtually* rejected. The expression was a cautious one; but the reason of their being in this situation is, that *Pennsylvania*, who was the holder, took no steps to have them loaned, or the question decided. The state officers even desired that they might not be received, and the opinion of the Attorney-General of the state was, that they were not receivable.—Besides, in the late consideration which the Secretary gave to the Act of 1789, he says, that the circumstances of its being passed after the ratification of the Federal Constitution did not occur to him.

Whether subscribable or not, depends therefore wholly on the Acts of Congress.—It is evident, that the Act contemplates this *very debt* as a state debt. The 18th section expressly provides for a difficulty which could arise in no other case. (Here it was read and explained.) The very nature of *these* state debts, was urged in Congress as a reason for the assumption;—and there was a peculiar and evident propriety in assuming them. But no difficulty was made on account of the Act of 1789.—If the New-Loans were to be excluded, why not the same exception as that respecting the *North Carolina* certificates? Our delegates were as attentive to the interests of *Pennsylvania* as those of other states; and one of them was a member of the Assembly in 1789. The Act of Congress was not passed in a hasty manner. It lay over a whole session and there was time enough for consideration.

But

But it is objected that this proviso shews that the New-Loans could not be subscribed because the state had authorised no one to surrender the Continental certificates which were exchanged for them. To this two answers may be given and both of them satisfactory. 1st. This debt was subscribable under the general independent clause of the Act. The proviso respects only the payment of the interest and was introduced merely for the security of the United States. It does not in any manner limit or restrain the *subscription*. Such is the construction given to it by the Secretary of the Treasury. (Here Mr. *Gibson* read the letter p. 272-3, at the request of Mr. *Bradford*.) The state therefore had the power to subscribe the Continental certificates to the domestic loan and the holders of the New-Loans to subscribe to the state loan. But interest would have been paid only on one of the subscriptions; and the interposition of the Legislature to surrender their subscription, would not have been withholden, if the rights of their creditors had required it. 2d. Mr. *Nicholson* had power to exchange the Continental certificates for New-Loans, whether they were presented by the United States or by individuals. The negotiation in 1791 established this. (Mr *Bradford* here observed upon the letter relative to that subject, see p. 222.)

Another objection is, That the sum of *Pennsylvania* state debts assumed by Congress amounts to 2,200,000 dollars only; whereas if the New-Loans were to be included, it would have been much greater. But the argument turns the other way; for the whole of what is called the *proper* debt of the state did not amount near to that sum. But the whole amount of the debts of the several states was not intended to be assumed; but only a proportionable part of each. And although the New-Loan debt was large, yet great part of it had been already exchanged, and there was reason to believe that almost the whole would be so; because, generally speaking, it was the interest of the holders to subscribe the Continental certificates rather than the New-Loans.

(Mr. *Brad-*

(Mr. *Bradford* here exhibited some calculations of long and short interest on the different certificates, to shew their effect on the different loans.) Besides this advantage, the payment of the interest on Continental certificates commenced one year before that on the assumed debt. It was therefore probable that this sum of 2,200,000 dollars would embrace all that would be subscribed.—I will not enlarge on this subject. The result of our enquiry is, that New-Loans *were* subscribable, because they were evidences of a debt owing by the state.

But if a different construction could be put upon the Act, is it so plain a point that the opposite opinion must be imputed to dishonest motives and not to conviction of judgment? Is it a mistake, that can be expiated only by a political *auto de fe*? Is it a mistake, which every one else may commit with impunity, but which must subject the defendant to a species of ostracism? Forbid it candor—forbid it justice!

I ought now to consider the *motives* which really actuated the defendant; but it will be more convenient to defer this till the *principle* stated in the 2d article is also examined.

The second, third and fourth articles are so intimately connected that the whole may be reduced to this; that the defendant certified certain certificates to be redeemable which were not redeemable, with a corrupt and dishonest view.

The first question therefore is, Were the New-Loan certificates redeemable by the Act of the 10th April 1792? The article under consideration declares that they were not; and on the soundness of this opinion all the rest of the three articles depend.

The Senate will be pleased to remember that we contend that whatever was subscribable to the loan was made redeemable by that Act. We admit that they are not within the second section of that Act; but they are manifestly included in the sixth. The words of that clause are remarkably strong: "The holder or holders of any certificate *subscribable* to the subscrip-
tion

tion so to be renewed, shall be entitled," &c.—Hence subscribability and redeemability became convertible terms. The Legislature put themselves in the power of Congress. Whatever *state debts* Congress should chuse to assume, entitled the holder to the benefits of that Act. No other construction can rationally be put upon this clause. Even Mr. *Gallatin* who drew the bill and gave us the secret history of it, acknowledged the justness of that construction.

But it has been urged that the sixth section was not intended to include any debts not included in the second.

Permit me here to remind this honorable body, that a mode of construction has been introduced which is subversive of all legal certainty as well as of personal safety. We are led from the language of the law, to the private sentiments of the members of the legislature, and to the very manner of drawing the bill. Though most the members of this court, were members of the Legislature which passed the Act, they will remember that all recollection of private intention at that time, is to be laid aside construing its meaning. Its language alone is to be attended to. It is that on which every citizen must form his opinion of the law; and to depart from this in judicial construction is to poison the fountains of justice. The danger of this has created doubts concerning the propriety of erecting such a court for the trial of impeachment; and it has been made a great political question whether one branch of the Legislature should ever decide on charges exhibited by the other. Remembering the particular objects they had in view, they are in danger of limiting or extending the words within or beyond their natural and proper import; while the safety of the citizen consists in confining the judge to the meaning of the Legislature as *expressed in the law itself*. Inconveniences may sometimes result from this; but the partial evil is overbalanced by the general good. *Beccaria* has an excellent chapter on this point. (Mr. B. here read some passages from that author.)

But

But why do I dwell on this subject?—I am speaking to the Senate of *Pennsylvania*.

Judging therefore by the *expression* of the sixth section, no doubt of the redeemability of the certificates could remain. But several objections are made to this; and they seem to be all contained in the report of the committee on that business. The first is, That no funds were provided by the Act for the redemption of these certificates. I am disposed to admit that the funds provided, are confined to the debts mentioned in the second section; but whether any specific funds were provided or not is immaterial, as by the existing laws there was a fund for all *claims*.—But we must recollect that the second section was to operate at all events, whether Congress renewed the subscription or not; but the sixth was eventual and dependant on that contingency.—The Assembly therefore might chuse to let it rest upon the aggregate funds already mentioned. (Mr. *B.* here went into some calculations to shew that this might be sufficient.)

But the fallacy of their argument is proved by the case of the Unfunded Depreciation certificates. They are not included in the second section, and yet it cannot be denied they are included in the sixth.—No specific funds were provided for *them*;—yet as they were state debts and assumable, they were of course redeemable. The induction is fair, and even Mr. *Gallatin*, who drew the bill and did not intend to include them, could not withstand its force.

That the Unfunded Depreciation were included was a general opinion. The Register-General and Mr. *Powel*, the late respectable Speaker of the Senate, were the first to put this construction on the Act. He did not hesitate to present such certificates for redemption, and they were redeemed accordingly. Judge *Yeates* did the same; and the Legislature to whom the Register-General made a report of a large sum of these certificates being redeemed, did not disapprove of it. To this day there is no disapprobation of it,—no suit brought;—

brought;—and well,—for where is the court that would sustain it?—If then Unfunded Depreciation are redeemable, so are New-Loan certificates.

But to do away the force of this, we are favored with the secret meaning of the author of the Act. Although we were in darkness before, now truly we are enlightened—the film is purged—a new ray of light breaks in upon us—and knowing what the drawer of the Act intended, we see as it were face to face!—Sir, if such principles of construction are to prevail in a criminal prosecution, the will of a *Turkish* Cadi would be as safe a rule of conduct as the laws of *Pennsylvania*!

Secondly, It is urged that the sixth section can only be regarded as a proviso or exception to the second. If the Legislature intended it as such, how easy would it have been, to have added after “certificates” the words “herein before specified.” This would have confined its operation to the certificates mentioned in the second section. But *si voluit non dixit*.—The sixth section as it now stands is a distinct independant clause. If it operates as such on the Unfunded Depreciation, why not on the New-Loans? “Because, say they, these are not a *state debt*.” Here we are thrown back upon the old question.

This forms the third objection in the report of the committee.—“Because,” say they, “it does not extend to any but *state creditors*.” Now, if New-Loans were state debts, the holders of them must be state creditors. There is no magic in these words to include Depreciation and to exclude the Loan debt. They are used merely to distinguish the creditors of the state from the creditors of the United States. We are therefore brought back to that which is the only real question in the cause; whether these certificates were evidences of an existing debt or not?

But it has been hinted that whether in strictness it were a debt or not, yet it was not *so considered* by the Legislature in 1792. What is the proof of this? Their Acts contain no such thing—and if an appeal is made to the private opinions of the members, I repeat it, we

cannot take notice of them.—As to the Comptroller, *he* always considered them as debts. In his statement of the 10th December 1791, he speaks of them as such, and the word “redemption” which has been urged against him, refers only to the Land-office, from which the Act of 1789 had excluded them.—It was properly observed that it was not the duty of the Comptroller to bring them forward in any other view, as there was no present intention or ability to pay them.

Thus it appears that none of the reasons urged in support of the construction which the articles put upon the Act, will apply. We must therefore resort to the plain *language* of the Act. Whatever Congress should make assumable the Legislature made redeemable. Nay, the Act goes further, and makes the acceptance in the Continental Loan-office, the rule for paying the nominal value by the state.

The New-Loans therefore are included. And what are the inconveniences of this construction?—The holders were citizens of *Pennsylvania*; they have given up certificates for the payment of which the state was bound at least to the amount of her quota—and received a solemn promise to be paid 20*s.* in the pound.—And yet the burden of the complaint is, that *Pennsylvania* was by the defendant’s conduct obliged to pay this 20*s.* in the pound!

The certificates which the state received in exchange have been and may be again sold at their nominal value;—but if the state could get them without paying a shilling in the pound, it seems as if it would be very acceptable.

Sir, this eagerness to put a little profit by the rise and fall of stock into the pocket of the state is disreputable. It is to represent the sovereign state of *Pennsylvania* as a jobber in the stocks. Such was not the intention of the House of Representatives when they brought forward this impeachment.

Upon the whole it appears that these New-Loans were a debt—that its existence was not affected by the

Act

Act of 1789—that of course they were subscribable to the loan, and being subscribable were redeemable. Hence if *John Nicholson* did “recognise, certify and declare them to be subscribable and redeemable” he did no more than the law authorised him to do.

Having now come to a dividing point of my argument, and finding it impossible to finish the whole in the course of the morning, I submit it to the Senate whether it will not be convenient to adjourn.

Mr. *Lewis* rose, and observed, that the gentleman must have been much exhausted, having spoken four hours, had yet much to say, and he requested the Senate to adjourn till next morning. Adjourned.

In the minutes of the House of Representatives the following entry is recorded—

“In conformity to the resolutions of the 25th day of February last, the House resolved itself into a committee of the whole in order to attend the trial of *John Nicholson*, Comptroller-General.

“The Speaker quitted the chair and Mr. *Montgomery* was placed therein.

“The committee then proceeded to the Senate-chamber for the aforesaid purpose.

“After some time,

“The committee of the whole returned to their own chamber.

“The Chairman left the chair and the Speaker resumed it.

“The Chairman then reported that the committee of the whole House had attended at the trial of the articles of impeachment against *John Nicholson*, Comptroller-General.

“The committee appointed to manage the trial of the articles of impeachment of the House of Representatives against *John Nicholson*, Comptroller-General, reported further progress, and that the Senate would attend to hear the further arguments to-morrow morning at ten o’clock.

Fourteenth day of the Trial.

F R I D A Y, MARCH 14.

SENATE met as usual.

Mr. BRADFORD in continuation.

*Mr. Speaker, and
Gentlemen of the Senate,*

Having, yesterday, discussed the *legal* positions contained in the first and second articles of impeachment, I am now prepared to examine the *fact* charged in those articles. It is, That the defendant declared New-Loan certificates to be subscribable and redeemable, and caused them to be redeemed, with corrupt views, and in wilful violation of his duty.

We have endeavoured to prove that he was right in his construction of the law; but if it be admitted that he was wrong in that, still he is excusable, and no guilt is imputable to him, if his conduct flowed from conviction of judgment and not from corruption of heart. It is therefore of importance to sift his conduct thoroughly, and to see what were his real opinions and motives. The question then is, *Did John Nicholson act thus knowing or believing it to be wrong?* I am willing to put the cause on this simple issue without holding the opposite counsel to the proof of all the aggravations charged in the articles. It may however be proper to take some slight notice of these, as they have been pressed against the defendant.

To begin, then, with the first article: It is stated that he declared these certificates subscribable—"under colour of his office—and in violation of the confidence reposed in him."—It appears that he made this certification in very few instances; and that this was done at the request of Mr. Smith or of individuals, who wished to transfer

transfer or sell their abstracts before the certificates due on them, would issue from the Loan-office. This was an accommodation to those who requested it, but it was not an *official* act. No Act of Congress nor of the state, either required or forbid it. Mr. *Nicholson* did not certify it officially; he did not affix his official signature; he merely subscribed the initials of his name. This was not obligatory on the Commissioner of Loans, nor did he absolutely depend upon it. It is in proof that he gave a receipt importing that the certificates were still subject to examination; and in this examination he was directed by the Secretary of the Treasury to depend on no one but himself and his own clerks.—Being therefore trusted neither by the United States or the state of *Pennsylvania*, respecting this matter, the defendant's conduct could be no violation of official duty. But to say "that if it was an official act it was a breach of duty and if it was not an official act, he exceeded his powers and thus violated the confidence reposed in him"—is a very convenient argument! This is to put the defendant on the bed of *Procrustes*: If he is too long, lop him; if he is too short, stretch him.

2d. It is charged that it was done "in order to promote his own emolument." This cannot be true, for he did not certify the certificates, presented by himself, to be assumable; and in those cases where he did certify, no emolument was or could have been in view. But this circumstance *of itself* cannot aggravate the charge. To promote our own interest, is an honest end, if pursued by honest means. If the certification was *wilfully* wrong, whether it was done for his own or another's emolument, he ought to suffer; nay, it would be inexcusable to promote the greatest charity on earth, by dishonest means.—But it will presently be seen that he acted honestly; and that he sincerely believed what he certified to be true. It was an opinion which he entertained so early as the 30th September 1790; before the loan opened, and so late as December 1791, after it was closed.

3d. It is charged to be a "misdemeanor as contrary to the Act of 1789." We have already discussed that point, and shewn that it was not contrary to that Act; but if it were, yet, if the heart was free it could be no misdemeanor.

4th. Lastly, it is said to be manifestly to the risk and *injury* of the commonwealth *as he well knew*. This is the point—the sting of the accusation. If this be true, we do not ask his acquittal; and I hasten to shew he did not *know or believe* that he was injuring the commonwealth.

In taking a view of the defendant's conduct, I am led to notice the representation that has been given of it by the gentlemen who preceded me. I acknowledge the beauty of the painting—the strength of the figures and the glowing elegance of the colouring; but I cannot perceive that a likeness to the original has been at all regarded. It is, in truth, a fancy picture, which shews the skill of the painter; but it is not a portrait, which exhibits the just features of the cause. It may impose on an inattentive observer; but I trust that so delusive a representation will have no effect on this court, to whom all the facts are distinctly known, and who will form their judgment from an impartial view of the whole.

That the conduct of the Comptroller did not proceed from dishonest motives will appear, first. From its being founded on an early opinion—conceived at a time when no advantage could be derived from it—an opinion fortified by that of the most respectable characters, and resulting from a thorough view of the subject. Secondly. From all the circumstances of the transaction which taken seperately or together evince the rectitude of his intentions.

The Senate will consider that proof of his holding these opinions at a time when no private or interested views could possibly actuate him, must be decisive. I will endeavor to trace the proofs of this in order of time.

(Mr. Brad-

(Mr. *Bradford* then went into a minute examination of the evidence, and to prove the early and continued opinion of Mr. *Nicholson* that New-Loans were subscribable, he made several observations, 1st. Upon the letter of the Comptroller 30th September 1790, p. 271-2. 2d. His letter to the Governor 24th December 1791, p. 220-1. 3d. His letter to Secretary *Hamilton* 29th December 1791, p. 227. 4th. Upon the conference between him and the Secretary, p. 288. 5th. His report to the Governor 29th December 1792, p. 223-4. 6th. His plan of finance and his observations thereon, p. 284.)

Being satisfied that these certificates were subscribable he could not avoid believing that they were redeemable, because these were in fact convertible terms. As soon as the Bill or Act of 1792 was published for consideration, he informed Mr. *Evans* of his opinion on this point, in which that gentleman concurred; and in a conference with Mr. *Donnaldson* and Mr. *Gallatin*, it was agreed by them all, that whatever certificates were subscribable were also redeemable. Hence it follows, that Mr. *Nicholson's* opinion of their being redeemable was not a new opinion but substantially the same with that which he had entertained long before, and at a time when no possible interest could influence him.

Although he perceived so early as the middle of March that the New-Loans would, if the bill passed, become redeemable, he was so far from desiring to avail himself of the advantages it presented, that we find him solicitous to prevent its passing into a law. He even remonstrated against it to several members of Assembly; and declared that he thought the words comprehensive enough to embrace bills of credit. But the representations which he made to Mr. *Gallatin* and others were not attended to—the Act was passed; and the door being opened, he had as good a right to enter as any other person.

From that time until June, when he certified some of these certificates to be assumable, we have no proof
of

of his opinion on this subject being expressed ; but his conduct shews that it was firmly fixed ;—so firmly that he risked his property and reputation upon it. He purchased this species of certificates with a determination to subscribe them ; nay, to subscribe them under circumstances, which made the hopes of profit *dependent upon the soundness of his opinion* ; for he affected no concealment, and if he had, it would have been unavailing. He knew also that if he was wrong in his construction of the law, he would be exposed to the loss of character.

In July, Mr. *Donnaldson* who had heard the opinion of New-Loans being subscribable, circulated out of doors, consulted the Comptroller about it. Mr. *Nicholson* avowed the opinion, and satisfied the Register-General of its justness ; and so fully that he did not think it necessary to consult any other officer, but passed the accounts and abstracts, although he knew them to comprehend *New-Loans*. He certified them to the Governor, and would have gone farther, if the warrants issued upon them had not been stopped in his hands.—Why then is not the Register included in the impeachment ? Because it is evident that he acted from conviction of judgment. Why not extend the same charity to the Comptroller ; for it is not pretended that the understanding of the Register is more cloudy or weak than that of Mr. *Nicholson*.

Lastly, we find the Comptroller avowing the same opinion to the Secretary of the Commonwealth, who found him passing the account of Judge *Addison* which related to New-Loan certificates. His expression was, “ I am sure I am right, and that it is the regular construction of the Act.”

Thus it appears that long before as well as after the Act, he constantly avowed one unvaried opinion on this subject, and under circumstances which prove that it could be no other than the result of a conviction of judgment.

Here it will be proper to notice a few objections.

1st. It is said, that the letter alledged to be written to the Governor on the 16th April 1792 did not include the New-Loans, and therefore that neither the Comptroller nor Register considered them as redeemable.—Admitting that such a letter was written, which is very doubtful on the evidence, it is said to have been in consequence of the requisition of the Governor, who desired a calculation might be made of the quantity of stock necessary to be sold under the Act of 1792.—The calculation that was then made could only be founded on the 2d section, which did not include the New-Loans. The Act of Congress had not then passed; and the sixth section of the law had then no operation, and it was therefore unnecessary to include *these* certificates in the calculation. For the same reason the Unfunded Depreciation were not included, although Messrs. *Gallatin*, *Donnaldson* and *Nicholson* concurred in opinion that they would be redeemable if Congress should assume them. Here, again, we may ask, why do we acquit the Register-General and not the Comptroller also?

Again: It was hinted, that whatever the language of the Act might have been, yet he knew the real intention of the House, which was explained to him by Mr. *Gallatin*. The answer is, that Mr. *Gallatin* could only give his own opinion; the intention of the Legislature is to be collected from the law; the Act speaks for itself. Nothing more need be said on this point.

From this review, the inference is clear, that the defendant was fully and honestly of opinion, that these certificates were both subscribable and redeemable.

I have said that this opinion was strongly fortified by that of the most respectable characters.—It is true this is no *proof* of his construction of the law being right; but it forms a strong ground of excuse if he was mistaken, to shew that others were mistaken with him. If it was an error, it certainly was an error which had the appearance of truth.

Among those who entertained this opinion we find the Secretary of the Treasury, whose discernment and

penetration will be doubted by no one. It was his duty to decide in the first instance upon this question. He had called upon the Loan-officer for all the laws relative to it, and he afterwards declared to him, "That the holders of the New-Loans have a right to subscribe them; that he might endeavour to persuade them to re-exchange their certificates, but if they persisted that he could not refuse them." He intimates the same opinion to the Governor in his letter, 21st December 1791, and the conference with the Comptroller was founded upon it. At this time, it is evident, he must have examined the Act of 1789, though he does not recollect that it was before him; and if he afterwards distrusted his former opinion, he explained it by adding, that it did not occur to him that the Act of 1789 was passed after the ratification of the Federal Constitution.—But the question is, What was the Secretary's opinion at the time he had the conference with the Comptroller, not, what it appears to be at present?

The Commissioner of Loans entertained the same opinion of their subscribability; so did Mr. *Wolcot*, as may be fairly inferred from his letter. The Governor also is officially apprized of the same opinion, and tho' he does not express his concurrence, yet his conduct was founded on a belief that the Comptroller was right in his construction of the law. Indeed it seemed so obvious a construction, that few who examined the Act, doubted it. Almost all, whom he conversed with, agreed with him. Mr *Evans* was convinced of the soundness of the opinion, and determined to adventure in a purchase of these certificates. Mr. *Donnaldson* was convinced, though not *deluded*. Of the same opinion were Mr. *Boggs*, Mr. *David Rittenhouse*, Judge *Addison* and others. The last mentioned gentleman examined the Act which Mr. *Dallas* shewed to him in the Council-chamber; and he was so fully satisfied, that he received the amount of his certificates from Mr. *Nicholson*, who advanced the money, in order to accommodate him.—Why then should it be deemed criminal

minal in the Comptroller to yield his assent to what convinced so many?

Second. The honesty of his intentions appears from all the circumstances of the transaction.—If he had been conscious of any unjustifiable views he would have attempted concealment; but his conduct was open and fair. He concealed nothing but what was proper to be concealed; and as soon as the subscription was made he was careless who knew it.

In the first place, it appears that he made the loan, and subscribed in his *own name*. It would have been easy to have used another's, and to have concealed himself under the name of a friend. Again: He inserted certificates in his abstract, which must have discovered to the Register-General and others, that they were New-Loans.—Thirdly. He did not attempt to hurry it through the offices. It lay there the usual time and went through the usual train of business.—Besides, he knew that the subscription of New-Loans must be known not only to all the officers of the Treasury of the United States, but also to the state, when an arrangement for delivering up the Continental certificates became necessary. He also certified the abstracts of others, who had no motives for concealment and would no doubt mention the transaction. In this case, if his construction of the law was not tenable, he would be obliged to refund. The clumsy fraud, if it had been a fraud, could not fail of being detected, and if it were detected, his hopes would be blown up, and must have proved fruitless.

To the insinuation that all this was done for the purpose of getting money into his hands *for a time*, which he could not finally keep, I have nothing to say. His circumstances were not so miserably dependant as to make this pitiful scheme possible.—In short, he must have been destitute of common sense if he had acted thus openly and incautiously, without a perfect conviction that he was legally as well as morally right.

I shall

I shall now dismiss the first and second articles, and proceed briefly to examine the third and fourth.

I consider the third article as a mere statement of evidence, and if the two former articles cannot be supported, neither can *this*, which is urged to prove his corrupt views and his endeavours to avoid discovery and detection. For this purpose it is charged, 1. That he did not consult the Register. To this the answer is plain, that no law obliged him to consult that officer; and why should he have consulted him when he had no doubts on the subject? Besides, it was unnecessary; for soon after the law passed, he and the Register settled the principle, that whatever was subscribable was redeemable.—Again: It is said, 2. That “he did not consult the Governor;” and to this it has been replied, that the law directs him to consult the Governor only in those cases where the officers differ in opinion. It may be added that he did in fact apprise the Governor of it when he informed him that the New-Loans were a subscribable debt.—It is charged, 3. “That he did not *discriminate* in his certification nor in his accounts,” &c. As to this certification to the Loan-officer, it was not an official act, and the state has nothing to do with the form of it; and as to the account raised and transmitted to the Governor, it is a decisive answer that they were rendered in the manner which had been settled in April 1791. These accounts *originated* in the Register-General’s office and were sent up to the Comptroller merely for concurrence. Yet the purity of the Register’s views is not impeached, nor is *he* included in the accusation.

But, Sir, the absurdity of the charge is evident, for this conduct could not have been adopted for the purpose of avoiding detection, because the species of certificates contained in the abstracts were discoverable from the abstracts themselves: 1. By the different dates of interest. And, 2. By the reduction of the principal sum, which took place in no other state certificates.

Lastly,

Lastly, it is said that the checks of office were thereby destroyed. What checks are there pointed out by law or former usage, which have not been observed? There are none; and the Register-General, even after he was informed that the abstracts comprehended New-Loans, pursued the same method as before. There are no grounds for this flimsy charge, which seems to be thrown in merely to swell the account! (Mr. B. made some further observations on the evidence, and then proceeded to the fourth article.)

The fourth article depends upon the third—"In the *above* delusive manner," &c.—It is but another mode of stating the same thing.—If he be acquitted of the third charge, he cannot be convicted of this.—The article goes on and says, that "he certified that the New-Loans were redeemable and payable." He had a *right* to do so, if by law they were redeemable—he is *excusable* in doing so, if he really thought them to be redeemable.—As to the funds, the Act of 1792 is not referred to, but that of April 1791. (Mr. B. then made some observations on this Act to shew that this fund for claims might be applied to the redemption of the New-Loans.) There was no other fund than this for the redemption of the Unfunded Depreciation. Yet the Governor did not scruple to issue warrants for the payment of these, though it was evident from the amount of the interest stated in the accounts that it could arise from that species of certificates only.

Here again I may be permitted to ask, why is not the Register-General included in the accusation, since he joined in this certification to the Governor as well as the defendant? Since both acted alike, why this discrimination? I am persuaded that both are equally innocent.

But I quit this article, which is of no importance if the defendant should be convicted of the other charges—and if he is acquitted of them, he cannot be affected by this.—They depend one upon the other, in a manner that reminds us of the Indian philosophy. The
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world, said the *Bramins*, rests upon the back of a great elephant—the elephant on the back of a huge tortoise—and the tortoise on—they did not know what. So the fourth article stands on the back of the third—the third on the second—the second on the first—and the first on—nothing at all.

We now come to charges of a different nature from those which have hitherto passed in review before us. The fifth and sixth articles are, however, substantially the same, and charge the defendant with availing himself of certain official advantages for the purpose of speculating in certificates. To the first of these we might have safely demurred, and admitting the fact, have relied on the law that it is not impeachable. But this would have been useless, since the Senate being judges both of law and fact, will acquit the defendant, unless the facts proved are the proper subject of *legal* prosecution.

Permit me to remind the Senate that impeachments must be founded on the breaches of existing laws. Indulgence may be shewn to the *form*, but none to the *substance* of the charge: And an impeachment cannot make that criminal here which would not be so before the ordinary tribunals of justice. (Mr. *Bradford* here quoted 4 *Black. Com.* 256. 2. *H. P. C.* 250, and *Woodison's* lectures.) Indeed the learned gentlemen, although one of them talks of “doing substantial justice,” will not openly contend that any thing is impeachable which is not absolutely illegal.

This honorable body therefore will recollect that they are not *now* to judge by the rules of expediency. That is the province of a Legislature not of a Court. Some things are lawful which many may think inexpedient; but while the citizen only exercises his rights, he is amenable only to the tribunal of public opinion. True liberty consists in being always permitted to do that which the *laws* do not forbid; and a republican government has been well defined to be a government of laws and not of men. We are, therefore, not to discuss
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in this place the *propriety* or *impropriety* of the defendant's conduct; but its *lawfulness* or *unlawfulness*. We are not to enquire whether in any instance he has overstepped the extreme delicacy of official conduct, but whether he hath overleaped the bounds of the law. Delicacy is one thing, crime is another; and we judge by very different rules respecting them. To mark the precise limits of the *proper* and the *improper* is the business of criticism and taste; and the decision will depend upon our education, habits, feelings and temper.—But the law is the only standard by which we can measure the conduct of a citizen criminally accused.

There are men of so soft a contexture, that far from insisting on their rights, they make the expedient the rule of their conduct. They will not even eat meat, if thereby they should offend a weaker brother. They shrink like a sensitive plant from the touch of censure—and their minds are accustomed to take the varying hue of public opinion. But men of more republican firmness will stand on their rights. They will judge for themselves of the proper and improper; and relying with confidence on the conclusions of their own minds, they are satisfied if they find the laws do not prohibit their conduct.—Judging therefore by these principles, the defendant must be acquitted; for what law made it unlawful for him to purchase certificates in the manner this article states?—Whether such official advantages shall be allowed or not, is a matter of *positive* regulation. Some states allow their officers to speculate in articles, in which their official situation gives them manifest advantages: Some forbid them; and the general government prohibits it more generally than the states. Thus in *Pennsylvania* the auctioneers were allowed to purchase at their own auctions until 1783, when it was forbidden. The officers of the Customs by the laws of the state might have traded; by those of the United States they cannot. The Secretary of the Treasury and even the clerks in the office cannot speculate in certificates; but in all the department

partment of our Treasury it is different. So the officers of our Land-office may deal with great advantage in land; and it is clearly lawful because no Act forbids it.—If the conduct of any officer is in the opinion of the Executive manifestly improper though not illegal, the remedy is by removal not by impeachment.

But in the case before us there were no official advantages that deserve any consideration. He could have bought these certificates as conveniently at a brokers as from those who came to the office; and a small advance would have poured them into his hands. He is charged with purchasing them of *many*; but only two instances of such purchases are proved; that from *Oidden* and that from *Biddle*. If this be criminal, by what Act is it made so?—He has broken no law of the state, and therefore no guilt is imputable to him.

We now proceed to the sixth article, which is nothing more than the fifth new-vamped. It charges the same facts but supposes that the certificates bought were really *the property of the state*. This legal position is wholly unfounded. Mr. *Dexter* stated the offer to exchange as an executed contract—and as a complete transfer of the certificates to the state, before an *actual* exchange took place. But his reasoning on this point is fallacious. The certificates were lodged merely for examination, and the indents, required to complete the exchange, were not offered. How then could they become the property of the commonwealth?

Let us bring this point to the touch-stone of the law. Could the state have sued Mr. *Oidden* for the indents? No, for an *option* is given him only on condition of his payment of the indents. The Act of 1789 permits, but does not compel an exchange. Again: Could *Biddle* or *Oidden* have maintained a suit against the state for the Continental certificates without an actual tender of the indents? Surely not; for it is settled, that where two concurrent acts are to be done at the same time, one party must do all that on his part is to be done before he can maintain a suit against the other.—

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The property therefore remained as before. The holders, who lodged them, might have wrested them from the Comptroller in an action of trover; and they would have been liable in his hands, to the debts of the individual.

Besides, it was the uninterrupted practice to re-deliver them, if required, after they had been lodged in the office. In proof of this we have the cases of *Thomas Hale* in 1791, *Daniel Stroud* in 1793 and *Col. Porter*.

If the gentlemen be right in their law, all these persons were plundering the commonwealth, because they took back their certificates—and yet they do not seem conscious of any impropriety! But really this refinement on the charges is unworthy of a state prosecution!

It has been said “that if the Comptroller delivered back these certificates to those who lodged them, he was guilty of perfidy.” Well Sir! the Comptroller officially informed the Governor that *S. Mark* had withdrawn his certificates and parted with them to others. Here is an avowal of “this perfidy” to the Executive Magistrate who is so far from dismissing or punishing the Comptroller that he does not express any surprize at the information. If this be a crime you cannot convict the defendant without involving the Governor in a degree of the same guilt.

There being, therefore, no ground to say that certificates in that situation were the *property of the state*, it follows that the 6th article does not differ from the fifth.

But we are told that responsibility of officers is the great security of Republics. Sir, there is a responsibility of character and a responsibility of punishment. The former we will answer in another place; the latter arises only from a breach of the laws. Shew us then the Act of Assembly that we have broken; if there be none, shew us at least some adjudged case which makes such kind of dealing a crime. If there be such a case, it will sweep like the scythe of time; it will cut down

great and small, and many fair and unblemished characters will come within its reach and may be brought before this honorable court.

If there be circumstances here that require further discussion they should be discussed elsewhere. I wave any further enquiry—for the Senate cannot decide upon them.

I hasten to the *last* article—and rejoice that at length I see land. The amount of this is, that he plundered the state—that he filched from the mass of public property a certain certificate which had been exchanged with the commonwealth. If this be true, he must be a wretch indeed! he would not deserve the honor of an impeachment. Such a charge brought against *any* man ought to be well supported; but brought against a man of unblemished character, the proof ought to be strong indeed. It ought to be supported by a number of witnesses, or at the least, by the lucid testimony of one man speaking positively to the fact, on whose memory and recollection the firmest reliance might be placed. But what is the number of witnesses against the defendant?—One. What the impressions on his memory? They resemble the traces on the sand of the sea-shore.

The charge is, That Mr. *M'Clenachan* exchanged this certificate with the state,—and as it was afterwards subscribed by the defendant—the inference is that he embezzled it.—It must therefore be first proved satisfactorily that Mr. *M'Clenachan* *did* exchange it. Let us examine this.

It is probable that he had such a certificate so late as September 1790;—and it is certain that Mr. *Nicholson* had it in July 1792. He says he did not *sell* it to *Nicholson*; but whether he exchanged it or not he cannot tell, for he sold to others. Such certificates as were unfold he carried to the Comptroller to be exchanged. When the witness cannot swear that he delivered the certificate in question to the defendant, can you, gentlemen

men upon your oaths say that he did? Here is not the shadow even of presumptive proof!

Even in the case of a miserable felon indicted for larceny, it must be first proved that a larceny was committed, before he shall be put to make any defence. If the owner should say, I cannot say it was stolen—"I had such articles"—"I sold to others."—The candor, of the Attorney-General would induce him to direct an acquittal. Principles established for the safety of all must not be violated. They require proof in this case as well as in that just stated: but Mr. *McClenachan* cannot recollect what became of the certificate in question.

But it is said altho' the evidence is not very perspicuous yet it is sufficient to oblige the defendant to show how he came by it. No! *They* aver the fact. They cannot stir a step till they have proved the exchange: But if any fact can be distinctly seen thro' the thick mist—the palpable obscurity which the testimony of this witness has shed upon the transaction, I am sure it is not the fact required. The witness will not swear that.

But it is urged "That if Mr. *Nicholson* bought this certificate, it is capable of proof." Indeed! then if Mr. *McClenachan* exchanged it, it is also capable of proof. "But the latter kept no account of his certificates!" and what proof have we that the former did. Why, it is said, he is a regular man—he keeps a diary! I appeal to you gentlemen if that was fairly urged; since we offered to produce it and they would not suffer it to be read. But that was a diary of his official, not of his private, transactions. It commenced in March 1792. How then could it assist us in tracing a certificate subscribed to the loan which closed in 1791?

Again it is said, "If the person exists upon earth who sold it to the defendant he may be produced." At present it is sufficient to ask, What if he does not exist upon earth? Who can keep his witnesses alive? In what a terrible situation would many be if such modes of proof are to prevail. Thousands would be unable

to trace the certificates they honestly bought. They pass from hand to hand. Often no note made of the seller's name or of the purchase. In such case your own oath will not be received; and a purchase of this kind will be incapable of proof.

The danger of obliging a defendant to produce such proof even when there are strong presumptions against him is considerable. What would Mr. *Nicholson* have done, had *Hans Hamilton* been dead?

Once more it is said that Mr. *McClenachan* delivered him *many* certificates. We answer that we *bought* many. The answer is equal to the proof.—Lastly, it was said, “What other proof could be produced?” I reply, that they ought clearly and positively to prove the exchange or to forbear the charge. There is no extreme difficulty in making such proof if such were the fact.

This is a sufficient answer *at present*. The time may come when this matter shall be fully understood. Here, in a criminal prosecution, it would not be proper for him to answer upon oath; but in the civil suit, he will submit to interrogatories. They may prove his heart to the bottom and I trust they will find it honest.

But what is the manner in which the testimony on this article has been taken?—The longer I live the more I perceive the necessity and advantage of *viva voce* testimony in criminal prosecutions.—Had the witness been examined openly before you, the doubt or the certainty with which he spoke would have evidently appeared. But when his answers are reduced to writing they appear to the best advantage, and we can only judge from the expression. Yet even this exhibits a recollection feeble and uncertain. Mr. *McClenachan* is known to be a man of the most perfect integrity and uprightness. He will not swear what he does not remember; and in his examination the burden of the song is, *I cannot recollect—I cannot tell.*” (Mr. *B.* then read the answers to shew how very frequently these expressions occurred.)

Can we then be sure, even when he states a fact, that he has not forgotten all the circumstances attending it which serve to explain or qualify it? If every question that leads to an explanation is answered with, "I cannot tell," or refused to be answered at all, what can we rely on? All that we can be sure of is, that he carried a bundle of certificates to the Comptroller's office and left them with him even without counting them, having, as he says, the most unbounded confidence in Mr. *Nicholson's* integrity. That the certificate in question was one of them, we have not the shadow of proof.—Shall the defendant then be convicted on such flimsy evidence—the imperfect testimony of an unrecollecting individual? There is no *proof* of the exchange—there is not even a probability—there is a bare possibility. Even that possibility is answered by our producing the abstracts of the certificates exchanged by Mr. *M'Clenachan*. In these, the certificate in question does not appear.—We might therefore venture to say that it is not possible.

Against such evidence a simple denial of the charge is enough; but when it is aided by a fair fame and upright character, formed by a life of unblemished integrity, every suspicion vanishes.

When I speak of character, I mean the reputation he enjoyed before the jealousies and cruel suspicions which the manner of conducting this business has excited against him, existed. These however will not injure him here. We call no witnesses to prove his character because it is well known. I appeal then to you, gentlemen, who have personally *known* him—to you who have known him *long*—to you who have known him *intimately*—who have looked as it were into his bosom and seen the bottom of his heart—I ask you, if ye have not always found him an upright citizen—an honest man! Put this into the scale against that which is charged with the accusation—and ye will find that the proof against him is as dust upon the balance.

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Here then let us pause; and from this point as from the eminence of truth, look back upon the field over which we have travelled. Where are the traces of this “*fraud, dishonour and perfidy*,” which have been so freely charged? Where are the “spoils of his country” with which he has been loaded? Where do we perceive the arts, the tricks, the deceit, the undue concealment of which we have heard? Where is the *peculation* charged? Where the *delusions* by which he accomplished it? I see them not; they exist only in the creative imagination of the speaker (Mr. *Dexter*) not in the evidence. I see a conduct open, but firm, and founded on the basis of the law. I see an honest mind acting from conviction of judgment: I see him exercising the rights of an independant citizen, and finally facing this accusation with that intrepidity which is the characteristic of innocence.

We rely therefore with confidence upon your justice:—that we shall be judged, not by opinion but by the law and the testimony; not by reports circulated out of doors, but by the testimony given here in court.

We feel not the weight of the accusation; but we cannot be insensible to that of our accusers.—The accusation of the Representatives of *Pennsylvania*, cannot but inspire prejudice. To prevent the effects of that prejudice, the Constitution contemplated this honorable Court, and placed the accused safe under the independence and magnanimity of this high tribunal; a tribunal, supposed to be superior to that awe which the most numerous and influential branch of the Legislature might otherwise inspire.

As this is the first impeachment, we are now to make an experiment interesting to republican government. We are to see if the citizen is as safe here as before the ordinary tribunals of justice. It is to decide, whether one order of the representatives may safely be the judge when the other is the accuser; and whether under any circumstances it be advisable to depart from a trial by a jury of our peers.—As for us, *we* have no doubt but that

that this Judicial authority is safely deposited. We have no doubt but you will weigh with caution and decide with firmness—that your ears will be open to the voice of truth but deaf to the clamours of suspicion. So doing, Mr. Speaker, may you and this honorable Court receive that best of all rewards, the approbation of your own consciences. Adjourned.

 The proceedings in the House of Representatives respecting this trial, after this day's adjournment, were the same as in page 340.

[The express, which had been sent to *Westmoreland* county, by the defendant, to the gentlemen nominated as commissioners, for the purpose of taking the deposition of Mr. *Hans Hamilton* on interrogatories, (see page 313) arrived here the 22d of March; and the papers were sent to be opened by Mr. *Tilghman*, and Mr. *Ingersoll*: They are given in this place and will serve to relieve the attention of the reader, and to prepare his mind for the final decision of this important trial.]

“ GENTLEMEN,

“ March 8, 1794.

“ WE have agreed that you or any one or more of you be commissioners to take the answer of *Hans Hamilton* to the interrogatories inclosed on the part of the defendant, and the cross interrogatories on the part of the commonwealth in an impeachment now depending before the Senate of *Pennsylvania*; any of you that are Justices of the Peace will previously administer to *Hans Hamilton* an oath, and if the interrogatories be taken before any of you, not Judges or Justices, let an oath be so administered by a Judge or Justice, you will let said *Hamilton* subscribe his answers at the foot thereof, and you will thereafter certify that he having been so as aforesaid duly sworn did make and subscribe those answers,

answers, and let this certificate be under your hand and seal, or that of such of you as attend.

JARED INGERSOLL,
JOHN NICHOLSON.

W. TODD,

W. JACK,

J. BRANNON,

JAMES GUTHRIE, and

JOHN MOORE, Esqrs. or either of them."

Interrogatories, &c. of Hans Hamilton on the part of the Defendant, Mr. Nicholson.

1st. Did you or did you not apply to *John Nicholson* with the following amongst other New-Loan certificates, viz. One certificate for two hundred and forty-two pounds seven shillings and six-pence.

One other certificate for two hundred and sixty-eight pounds.—And,

One other certificate for eleven pounds sixteen shillings.

And if you did so apply, in what year, and whether in the early or latter part of the year, and whether you did or did not express to him your desire to have them exchanged and the Continental certificates funded to the loan of the U. S. and regret that you could not have that business done without delay and expence to you, and whether *Mr. Nicholson* did or did not propose to you that he would commute with you for the said certificates a sum in the funded stock of the said U. S. equal to what you would be entitled to receive from the public, or the value thereof?

Answer given by *Hans Hamilton* on his solemn oath administered to him by *William Jack*, Esq. one of the Judges of the Court of Common Pleas of *Westmoreland* county to certain interrogatories forwarded by *Jared Ingersoll* and *John Nicholson*, Esqrs. and addressed to *William Todd*, *William Jack*, *John Brannon*, *James Guthrie* and *John Moore*, Esqrs. or either of them, on the part of the said *John Nicholson*, on an impeachment
now

now pending against him before the honorable the Senate of the State of *Pennsylvania*, and which interrogatories are returned, herein enclosed.

Ans. 1. The said *Hans Hamilton* on his solemn oath deposeth and saith, That in the month of February in the year of our Lord one thousand seven hundred and ninety-one, this deponent being then in the city of *Philadelphia* did apply to *John Nicholson* with New-Loan certificates for the sums expressed and mentioned in the first interrogatory, among others in order to have them funded in stock of the United States. The whole amount of which New-Loan certificates was 1237l. 16s. 10d. as the business could not be transacted at the commissioner of Loans's office for the State of *Pennsylvania* before the first day of April then following, as this deponent had been informed by Mr. *Smith* the commissioner of Loans, and expressing some uneasiness at the delay and expence he would necessarily be subjected to on that account, requested that Mr. *Nicholson* would be so obliging as to take the management of the business in his behalf upon himself (he being a gentleman in whom this deponent had particular confidence, and who had on former occasions been friendly to him in assisting and expediting him in his business) giving the said *Nicholson* power to commute the said certificates for such sum or sums as he would be entitled to in stock of the United States, and in such manner as the said *Nicholson* might judge to be this deponent's best advantage.

Inter. 2. If so, did you, or did you not agree to this proposition and thereupon deliver to said *Nicholson* your certificates of New-Loans as aforesaid, and did you or not, then take the private obligation of said *Nicholson* to do as he had proposed—and if so, what became of said obligation?

Ans. 2. This deponent in consequence of his own request and Mr. *Nicholson* consenting and agreeing thereto did thereupon deliver up the said New-Loan certificates amounting to £.1237 : 16 : 10 as aforesaid

to the said *John Nicholson*, who thereupon gave him a certain writing or obligation to commute the certificates in manner aforesaid or purporting to that effect as this deponent believes, which writing or obligation, together with other papers of this deponent was lost as this deponent believes on the 4th day of November following, at the time of General *St. Clair's* defeat. The said obligation was always considered by this deponent as a private undertaking by Mr. *Nicholson* and not as given in an official capacity.

Inter. 3. Did you or did you not afterwards and if so at what time return to the city and repair to Mr. *Nicholson* to put you in the way to draw the interest on your stock, and did you or not then find he had transferred to you a part of the stock of the United States, to which by contract aforesaid you were entitled for your New-Loan certificates aforesaid, and did you or did you not then receive your interest, and did you or not continue your certificates of that stock upon which you so drew interest in the care and custody of Mr. *Nicholson*?

Ans. 3. This deponent says that to the best of his recollection he returned to the city of *Philadelphia* in the first week or in the beginning of April in the year A. D. 1792, and having called on Mr. *Nicholson* to know what had been done in regard to the certificates with which he had been entrusted by him as aforesaid; he was given to understand that the business had been transacted and the papers left at Mr. *Smith's* office, that upon this deponent calling at the said office—one of the Clerks of said Loan-office told this deponent, the papers or funded certificates had been given to Mr. *Nicholson*—and upon this deponent's returning to Mr. *Nicholson* and informing him what the Clerk of the Loan-office had said. He the said *Nicholson* had replied, that he believed the papers or certificates were in his possession, but that he was then engaged and had not time to make search or examine for them. Upon which this deponent said he did not want to lift the said certificates,

ificates, so obtained for him as aforesaid at that time or words to that effect, provided he could draw the interest due on them; upon which *Mr. Nicholson* gave this deponent a writing or check for that purpose on the bank, and upon this deponent's presenting the same to the cashier of the said bank—he thinks to a *Mr. Shields*, he this deponent was informed by him that there was one year's interest due and desired this deponent to subscribe his name on the books for the receipt thereof, and upon so doing this deponent was immediately paid the sum of one hundred and forty-eight dollars and fifty-three cents on that account, which he understood and was informed was in full of one year's interest. The said funded certificates being left by this deponent and still remaining in the care and custody of the said *John Nicholson* until the twentieth day of January, A. D. 1794, before which time to wit, in the month of April, A. D. 1793, this deponent received by his attorney in fact, *John Moore*, Esq. who was duly constituted by him, one year and one quarter's interest amounting to £.69:12:2 or thereabouts.

Inter. 4. Did you or not after the last mentioned transaction on your going to *Philadelphia* receive from *Mr. Nicholson* your certificates and cash for the balance due to you for a deficiency of stock he had not transferred to you?

Ans. 4. This deponent about the 18th day of January, A. D. 1794, again returned to the city, at request of *Mr. Nicholson*, expecting to be examined upon the subject of the trial. That on the 20th of the same month, he, this deponent received from the said *John Nicholson* three certificates which had hitherto, and by this deponent's consent, remained in his care and custody. One certificate being for 2181 dollars thirty cents, dated October 3, 1791, and bearing interest from the first day of January, 1791, at the rate of 6 per cent. &c.—one of same date for the sum of 1090 dollars 65 cents, bearing interest at the rate of six per cent. from
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the first of January, A. D. 1801, inclusive; and one other certificate for the sum of 588 dollars 94 cents. bearing interest at three per cent. per annum from the first of January, A. D. 1791, all subscribed by *Thomas Smith*, Commissioner loans. That the said certificates were delivered to this deponent by the said *Nicholson* without any demand or request made to him for that purpose, and had been all loaned in this deponent *Hans Hamilton's* name, and this deponent was informed by the said *Nicholson* at the time of his delivering up the said certificates to him, that there was a balance due to this deponent, which he would pay him in a few days. That in the course of the same week this deponent thinks he was paid by the said *John Nicholson* the sum of two hundred and seventy-six dollars in bank notes and specie, being the balance due to this deponent as he was informed for a deficiency of stock which had not been transferred to him.

Inter. 5. Did or did not Mr. *Nicholson* give or deliver to you in commutation for the said certificates any of the continental Loan-office certificates which you originally had, and for which you received the said New-Loan certificates; or did Mr. *Nicholson* give and deliver to you the said funded stock of the United States in commutation of said New-Loans as far as the said stock went and pay you for the remainder in money?

JOHN NICHOLSON,

Countersigned,

March 9, 1794.

JARED INGERSOLL.

Ans. 5. This deponent did not at any time receive from Mr. *Nicholson* on account of, or in commutation for the first mentioned New-Loan certificates deposited in manner and for the reason mentioned in his answer to interrogatory first, any other certificates than those mentioned in answer to the fourth interrogatory as within or before mentioned, at which time or shortly after as there mentioned, this deponent was paid the balance due to him as is there set forth—The entire management of this business with the calculation of the

the balance due having been entrusted by this deponent to the said *John Nicholson*, as well as every other part of the said transaction, further this deponent saith not.

HANS HAMILTON.

Sworn and subscribed before me, this

17th day of March, A. D. 1794,

WM. JACK.

Done in presence of Us the subscribers, Commissioners appointed for this purpose, as appears by a writing signed by *Jared Ingersoll* and *John Nicholson*, given under our hands and seals at *Greensburgh*, this 17th day of March, one thousand seven hundred and ninety-four.

WM. JACK, (L.S.)

JAMES GUTHRIE, (L.S.)

JOHN BRANNON, (L.S.)

Philadelphia, March 8, 1794.

WE agree to appoint *William Todd*, *William Jack*, *John Brannon*, *James Guthrie* and *John Moore*, Esqrs. or any two or one of them Commissioners to take the deposition of *Hans Hamilton* upon interrogatories herewith transmitted—to be returned under the seal of the Commissioners or Commissioner acting, directed to *Jared Ingersoll* and *Edward Tilghman*, Esqrs. or either of them.

WILLIAM RAWLE, of Counsel
for the Commonwealth.

JOHN NICHOLSON.

Answers given by Hans Hamilton on his solemn oath administered to him by Wm. Jack, Esq. one of the Judges of the Court of Common Pleas of Westmoreland county to certain interrogatories on the part of the commonwealth transmitted for the purpose, and signed by Wm. Rawle of Counsel for the commonwealth.

Inter 1. Do you, or do you not know whether the funded stock of the United States which Mr. *Nicholson* gave you in commutation of the New-Loan certificates mentioned in his interrogatories, was the stock arising from the subscription of those continental certificates which the state had received from you on loan?

Answer. The said *Hans Hamilton* deposeth and saith, that as the management of the commutation of the New-Loan certificates left by this deponent with *John Nicholson*, amounting to £. 1237:16:10, was entirely entrusted by him to Mr. *Nicholson*. He does not particularly know whether the certificates received by him from Mr. *Nicholson* were received in exchange by the said *Nicholson* for the New-Loan certificates of the State of *Pennsylvania* left by this deponent for the purpose of exchanging or not, but that this deponent received as such, and has no reason to believe they were not.

2 Inter. Was the stock of the U. S. you received from Mr. *Nicholson*

Nicholson issued in your name and for your use? Mention particularly the numbers, dates, and sums of each certificate.

Ans. 2. The certificates received by this deponent from Mr. *John Nicholson* are severally in his this deponent's name for the several sums mentioned in his answer given to the fourth interrogatory on the part of *John Nicholson* (and herewith transmitted) and respectively numbered 1017 State of *Pennsylvania*, and for this deponent's use as he has regularly received the interest thereon when demanded.

Inter. 3. Did you after your original continental certificates were demanded on loan with the Comptroller-General, and at the same time or subsequently to your delivery of the New-Loan certificates to him to be exchanged, purchase the continental certificates originally loaned by you to the State, or become any way proprietor of the same? If yea, from whom did you purchase the same continental certificates, when and under what circumstances?

Ans. 3. This deponent after having deposited the New-Loan certificates of the state of *Pennsylvania* with *John Nicholson*, as an agent and obliging acquaintance, and not in his official capacity as Comptroller, did not then or at any subsequent time purchase the Continental certificates originally loaned by him to this state, or become any way proprietor of the same. This deponent, on the contrary, was obliged to dispose of £.1300 out of, or being part of an original certificate for the sum of £.1969 : 8 : 2 issued in his name, for services rendered the public as pack-horse-master, by Major *Story*, Commissioner appointed for settling and adjusting such claims. And which certificate with some others this deponent's property was commuted for New-Loan certificates of the state of *Pennsylvania*; the said sale having been occasioned by the embarrassed situation of this deponent.

Inter. 4. When you took your New-Loan certificates to Mr. *Nicholson* to be re-exchanged for Continental certificates, did you receive the Continental certificates from him, and then deliver them to him to be subscribed in your name and for your use, as equivalent for the New-Loans deposited with him, or did you before the receipt of the Continental certificates, and immediately after you deposited the New-Loans request Mr. *Nicholson* to take the Continental certificates and subscribe them on your behalf to the loan of the United States?

Ans. 4. This deponent says that in the year A. D. 1786, he thinks he exchanged the Continental certificates his property for New-Loan certificates of the state of *Pennsylvania*, and that he occasionally drew interest which became due thereon, and that the said certificates were in his this deponent's own care and

and charge until the month of February, A. D. 1791, when they were left with Mr. *Nicholson* in manner mentioned in his answer to interrogatory first, on the part of the said *John Nicholson*. In order to have the same funded on the best terms in the stock of the United States for this deponent's use.

Inter. 5. Did you re-exchange any New-Loan certificates for any of your original Continental certificates, or did you commute all your New-Loans with Mr. *Nicholson* for funded stock of the United States?

Ans. 5. This deponent says he made no such re-exchange; that he left his certificates as before mentioned with Mr. *Nicholson* for the purpose of being funded in stock of the United States. That this deponent received the first year's interest on said stock on the 10th of April, A. D. 1792 on Mr. *Nicholson's* order in this deponent's favour, as before mentioned; but that he had not then or previous to his receiving the said certificates so funded in stock of the United States, seen the said certificates so obtained in lieu of his said New-Loan certificates, but had understood they were issued in his name. But this deponent further saith that he had not at any time previous to the twentieth day of January last past, when they were returned to him. So far as this deponent can recollect, requested or desired the said *John Nicholson* to let him see the said certificates or to render him any particular account touching the exchange of them, or his management or agency therein.

Inter. 6. If you answer affirmatively to the first and second of the defendant's interrogatories, relate why the Continental certificates so deposited on loan were subscribed by Mr. *Nicholson* to the loan of the United States on your account?

Ans. 6. This deponent says, that the answer to this question is given in his reply to interrogatory first on the part of the said *Nicholson*.

Inter. 7. Had you any other transaction with Mr. *Nicholson* either in exchanging or commuting certificates of any description except that of commuting your New-Loans for funded debt of the United States? If yea, please to relate the same so far as such transactions respect the said New-Loans, or the manner in which Mr. *Nicholson* paid you therefor?

Ans. 7. This deponent does not recollect having any other transaction with the said *John Nicholson* in exchanging or commuting of certificates than before mentioned, except the loaning of three certificates, one in the name of *James Reynolds* for the sum of £.12:15:2; one in the name of *John Brisby* for the sum of £.4:4:6 and one other in the name of *James Smith* for the sum of £.4:19:6 in the New-Loans, for their several uses deposited with this deponent, and for which he holds himself accountable.

countable to them or their representatives, further than that Mr. *Nicholson* at this deponent's request, gave him two certificates, one for £.1300; the other for £.669:8:2 in lieu of a New-Loan certificate in his name for £.1969:8:2, and which this deponent forthwith returned to the said *Nicholson* upon receiving the said two loan certificates equal in amount to the loan certificate by him returned as aforesaid—and this deponent says that his reason for requesting the said *John Nicholson*, as Comptroller, to divide the said certificate, was to enable this deponent to make sale of the certificates for £.1300, in order to enable this deponent to discharge debts due by him. And that this transaction of issuing and granting the two certificates equal in amount to the one returned, was in the month of September in the year 1790, as near as this deponent can recollect.

Inter. 8. Do you know any thing further that may be material to the commonwealth or the defendant? If yea relate the same fully and at large as if particularly interrogated thereto?

WM. RAWLE, of Counsel for the Commonwealth in the impeachment against *John Nicholson*, Esq.

Ans. 8. As this deponent hath answered the several Interrogatories put to him fully and at length he does not recollect any thing further material either on the part of the commonwealth or the said *John Nicholson*.

HANS HAMILTON.

Sworn and subscribed before me,

March 17, 1794, WM. JACK.

We the undernamed commissioners appointed to administer cross interrogatories on the part of the commonwealth on the impeachment pending against *John Nicholson*, to *Hans Hamilton* the above subscribing deponent (the other gentlemen named commissioners not attending) do certify that having met at the house of *John Brannon*, Esq. in *Greensburgh* this day for that purpose. The said cross interrogatories were distinctly read to this deponent in our presence, and the foregoing written answers were made to the same and subscribed by him. Given under our hands and seals this seventeenth day of March in the year of our Lord 1794.

WM. JACK. (L. S.)

JAMES GUTHRIE, (L. S.)

JOHN BRANNON, (L. S.)

Fifteenth day of the trial.

SATURDAY, MARCH 15.

THE Senate met the consideration of Legislative business being postponed for the purpose of sitting in their judicial capacity. The members of the House of Representatives were also attending.

Mr. Lewis

Mr. *Lewis* rose and observed, that he was to come after Mr. *Wilcocks*, who was too much indisposed to attend; and wished the Senate would be pleased to postpone the trial until Monday. Adjourned.

In the minutes of the House of Representatives the following entry is recorded, commemorative of this day's progress—

“In conformity to the resolutions of the 25th day of February last, the House resolved itself into a committee of the whole for the purpose of attending the trial of *John Nicholson*, Comptroller-General.

“The Speaker quitted the chair and Mr. *Wynkoop* was placed therein.

“The committee of the whole then proceeded to the Senate-chamber for the purpose aforesaid.

“After some time,

“The committee of the whole returned to their own chamber.

“The Chairman left the chair, and the Speaker resumed it.

“The Chairman then reported that the committee of the whole had attended the trial of *John Nicholson*, Comptroller-General.

“The committee appointed to manage the trial on the articles of impeachment against *John Nicholson*, Comptroller-General, reported further progress.”

Sixteenth day of the trial.

MONDAY, MARCH 17.

Mr. *WILCOCKS* rose, and spoke as follows—

Mr. Speaker, and
Gentlemen of the Senate,

I COME forward before you, engaged by the committee of managers of the House of Representatives to conduct this cause; I come forward to support the char-

ges against the Comptroller-General of the state of *Pennsylvania*. This cause is very important in itself, from the nature of the charges, the high authority of the tribunal, and the interest of the party. I trust nevertheless that this last consideration will not influence the tribunal, but that if strong and ample evidence be produced, the conviction of the defendant will be the consequence; public justice require that a meritorious and innocent person who should receive an injury should be acquitted: The same principles demand the punishment of the guilty, as an acquittal in that respect would be improper. If the Comptroller-General shall be found infringing the laws of his country, the weight of respectability will not, it is to be expected, supply the want of evidence.

Such State prosecutions can only exist in free governments. It is therefore wisely and judiciously interwoven in the Constitution of *Pennsylvania*, it is the duty of the House of Representatives to impeach; it is the business of the Senate to try the impeachment.

We find the same Constitution denies the Supreme Executive the power of pardoning. The Senate in cases of conviction is therefore in some degree vested with a discretionary power to punish. The same Constitution has certain limits which cannot be passed; but within the extremities of it are certain discretionary powers. The punishment of the officer should be proportionate to the nature of the offence or misdemeanor. What if an officer is found unworthy of confidence and unfit to serve his country? In the first place he can be removed from office; in the next place, if it is deemed proper, he may be rendered incapable to hold any office of profit or trust, during life. (Mr. *Wilcocks* then read the article in the Constitution respecting impeachments, see page 210 of this.)

Thus we see limits which cannot be passed, but within these limits are discretionary powers according to the different degrees of offences; the Senate has full power to exercise the severe or lenient kind.

This

This cause hath been so fully and repeatedly travelled over, I feel a *repugnance* at taking up so much of your time, as the going over it again would require. I will however endeavour to touch on the merits of the principal parts, and will confine myself to those points most essentially connected with the prosecution.

The two first articles can be considered in one point of view; the several Acts of Congress and Assembly to which each of these articles refers, makes it proper to class them together, as the observations and reasonings will bring them into one point of view at the same time (*He then read the substance of the two first articles.*)

As to the facts contained in these two articles, they are plainly proved, or openly acknowledged and avowed. It appears from an inspection of all the abstracts except his own large one, that they are certified to be *genuine* and *assumable* in the hand writing of the Comptroller-General. It hath been remarked on by every gentleman engaged as counsel for the defendant, but not much relied on, that his own abstract was not certified *genuine* and *assumable*; I am clearly of opinion, that it need not be much relied on; for if one single instance can be proved, in which he criminally certified New-Loan certificates to be *genuine* and *assumable*, it is sufficient to support the charges.

They say he certified none of his own abstracts. When the circumstances come to be considered, all his abstracts are in his own hand-writing, and contain all the information to the Commissioner of Loans that he could desire. Advert to the two first articles, he is not charged that he certified on the face of the abstracts; but he is charged with recognizing, certifying and declaring New-Loans *genuine* and *assumable*. If there is any species of common law proof, that he certified to the Commissioner of Loans, it is sufficient to support the charges; then why will it not appear as well from the abstracts being made out in his own hand-writing. He was early called upon by *Thomas Smith*, the Commissioner of Loans, for checks to prevent counterfeits and imposition;

sition; Mr. *Nicholson* sends two certificates to him (see letters page 271-2.) What can be more satisfactorily proven, than that the Commissioner of Loans thought them assumable, when the abstracts appeared in his own hand-writing?

With regard to the certification to the Governor (see letter, page 356) it was certainly official. This will not be disputed here as it hath been elsewhere, where they contend that he certified as *John Nicholson*, and not as Comptroller-General. If neither the laws of the Union, or of *Pennsylvania* enjoined it on him, this is a very singular and strange doctrine indeed!

In thus certifying it is very true, that he acted in his official capacity. Nineteen twentieths of the agency of the public officers are not prescribed by law, so in the departments of the Land-office, Finance or any others, there are various instances in all of them to be discovered, which are not particularly mentioned in the laws; the Acts generally point out only the outlines of the different offices. To act contrary to the course of the offices, or to devise ways and means in opposition to the routine of the offices, are offences against these Acts, equally obvious as if specially and expressly pointed out by law.

Independently, therefore, the Comptroller-General could not act in any other than in his official character. The commonwealth of *Pennsylvania* was deeply interested in that Act; she wished to act fairly and securely with the United States. If the law is not expressive enough, shall nothing be done? Every officer was to act according to the duties of his respective department, and when called upon to act with zeal in his official capacity.

We therefore find *Pennsylvania* deeply interested in the due execution of the Act of the 10th of April, 1792, which made redeemable the debts which were subscribable. It was of great consequence to *Pennsylvania* that none should be improperly subscribed.

How

How can the Comptroller-General deny his official agency? That officer and the Register-General, in their joint communication to the Governor (see letter, page 217, 218) are conclusive on this head; wherein they point out the mode of conducting this business with the Commissioner of Loans: "*Examine the same as to their being genuine certificates and assumable,*" &c.

How then can the Comptroller-General say, that he was not acting in his official department?

I now come to the consideration of the question, whether the New-Loans were subscribable as State debts to the loan opened by the Act of Congress of the 4th of August 1790. It hath ever been impressed on my mind, that independent of the Act of *Pennsylvania* of the 27th March 1789, New-Loans were not subscribable to the loan of Congress.

After the adoption of the present Constitution, Congress found herself easy in her situation and perfectly competent to the satisfying all her domestic debt; and then contemplated the situation of the different states; among them she saw a number of individuals labouring under debts created by the war; she contemplated the taking of such, as in the first instance, the United States were not subject to be called upon, nor liable to a demand on them. This was the motive the General Government had for opening the loan.

The gentlemen have mentioned the description of *State Debts* receivable in this loan, and then ask if the New-Loans are not comprehended under this description! It is true they are, but those are not the only prerequisites; for in the same section we find, they must be *issued for services or supplies*: These were the essential requisites, and the New-Loans *being only granted for others*, they could not be within the meaning of the Act.

Now, suppose for a moment that the New-Loans were receivable, what would be the effect? *Pennsylvania* was to have the benefit of subscribing 2,200,000 dollars; nay, let us suppose twice the sum if you please,
for

for there was then near twice the sum out, the subscription of the New-Loans would exclude the proper State debt of *Pennsylvania*. This would burthen the commonwealth, which the law was designed to assist. How would *Pennsylvania* be eased then? Her condition would not be meliorated, for New-Loans are in effect no more than Continental certificates, only in another name.

The 18th section of the law of Congress was introduced not to invite the New-Loan holders to subscribe, but from an apprehension that they would be offered, and to guard against the consequences. This clause (18th section) hath been, and I suppose will again be urged, that these New-Loan certificates will be received. They might by possibility, or by mistake be subscribed, but then all interest is to cease until the Continental certificates be delivered up. Can it be supposed that Congress would assume them, when double interest might have been paid on the same sum?

New-Loans were never a money debt of *Pennsylvania*, neither were they subscribable or redeemable under her laws. The consideration of this part leads me to think that Congress never meant to include them in the assumption.

But a more important question arises, that is, Can they be contemplated as subscribable after the passing of the Act of 1789?

I apprehend New-Loans were never a money debt to be paid on or before the year 1796. This will appear from the Act of 1786.

The New-Loan was a certificate of a contract or engagement between the commonwealth and the public creditors, her citizens. The intent of which was that *Pennsylvania* engaged to pay the interest half yearly, and the creditor pledged with her his certificate as a security; the provision was intended as a temporary relief, and to continue until Congress should be able to discharge her own engagements, and then if *Pennsylvania* chose she might authorise an exchange of New-Loans

Loans for Continental certificates, and the public creditors have resort to Congress.

Our attention hath been called to the Act of December 18th, 1780, for the depreciation of the the pay of the army; and it is asked, why should not *Pennsylvania* assume the one as well as the other? It was in order to shew when *Pennsylvania* contemplated a permanent debt she knew how to distinguish between the depreciation certificates and those issued in 1786. The depreciation certificates were issued at the earnest solicitation of Congress; this commonwealth agreed to assume the depreciation certificates, Congress being unable to pay the debt, called upon the individual states to pay it, promising at the same time, that they would repay them.

Here then, are circumstances and inducements to do the one, and not the other. All she did was to calculate the sum due to each person for the depreciation of his pay in the army, the Act makes a provision for the redemption both of principal and interest, and reserves the right of paying them off in specie, or in any other current money equivalent.

I will now proceed to consider the nature of New-Loan certificates. Previous to the passing of the Act of 16th March 1785, it is obvious to the recollection of every person, that the war was then over, the Federal Confederation shewed itself inadequate to the purposes of good government; Congress had a great foreign and domestic debt, and not able to call on the individual states for resources and revenues. In this torpid situation, the public creditors who were citizens of *Pennsylvania*, laboured under inconveniences, resorted to their own government, praying relief.

The Legislature then passed the Act of the 16th of March 1785, in which she ordered her quota £.123932 of interest to be paid into the Loan-office of the United States, and ordered the Loan-officer to pay it to the public creditors, citizens of *Pennsylvania*; this she did at the pressing solicitations of her citizens, who were
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in distress, as Congress could not relieve them, this is stated in the preamble to be their motive, the 18th section makes it temporary until Congress could pay; this is the spirit and intention of the law of 1785, the same motives pervade all the subsequent Acts on the subject: And her designs were never to make any other engagements further than therein contained.

It may be asked, and I now mention it, why did not *Pennsylvania* assume all this debt, as she did in the case of the depreciation of the pay of the army? *Answer.* It was not done at the desire or instance of Congress, but by her own voluntary act. If this commonwealth had waited for the recognition of Congress, perhaps Congress would not recognise what *Pennsylvania* had done. She knew this appropriation was unpleasant and disagreeable to Congress, who wanted herself the application of the funds in her own hands. Moreover the depreciation of the pay of the army, was an ascertained sum very moderate, and far inferior to the other debt.

Thus the object of the act of 1785, was found disagreeable to Congress, and in September 1785, six months afterwards Congress determined to defeat the provisions of that act, as being disagreeable to her, and gave directions to her officer accordingly. Thus we find all the benevolence, all the advantages intended by *Pennsylvania*, absolutely defeated by those resolves of Congress, and the creditors reduced to the same difficult situation they were in before the passing of the act of 1785. Thus circumstanced, when the Legislature met in March 1786, she found the same cause existing as in 1785, the creditors still craving further relief, as there had been no change in their condition since March 1785; it was a reasonable idea, that finding the citizens, public creditors in the same situation, she should contemplate how they might make some other provisions for the exigencies of those creditors on the same ground, same principles and same manner: It is presumed, that the same men called upon to act in the course of one year would act as they did before.

It

It was not necessary to give more relief, but it was expedient to give it in a different way. The Legislature reasoned a little here, they considered their former relief was defeated by Congress. How was it to be done? It was a perplexing thing; some other mode must be adopted without the intervention of the public offices of Congress; some good arrangements were necessary. It would not do to say, that every creditor should bring his bundle of Continental certificates to the State-Treasurer to receive his interest on them; this was impracticable and unsafe to the commonwealth; besides, where was her security, that if she paid so, it ever would be repaid her? The Legislature knew that it was an unpleasant business to Congress, and that she defeated the same measure six months before.

Some other mode must therefore be devised; the idea of a loan was proposed, and the expedient adopted; the issuing of New-Loans were devised only to give a convenient mode to the creditor, and to continue only till Congress should do justice to all her own creditors. How is this project to be carried into execution? We find, Sir, to effect this business, she directs certain certificates of her own to be issued and given in exchange for Continental certificates: The amount of the Continental certificates, their numbers, dates and other essential circumstances of the debt to be stated in a large margin; it is worthy of attention to consider how it was directed to be done. (*Mr, Wilcocks then read a part of the Act of March 1786.*) The preamble shews the Act of 1786 grew out of the resolves of Congress, which defeated the Act of 1785, and only went to secure the interest, because it was not done at the call of Congress, but voluntarily by *Pennsylvania* to relieve her own citizens. It is "inexpedient" to continue under that law, says the Legislature, but just and reasonable that our creditors should be relieved as far as circumstances will admit. The Treasurer is to provide certificates with a proper *margin* sufficient to contain the essentials of the debt to be secured. It was calculated

with this view to make it easy to return it; they never meant an absolute engagement, never meant to pay, else why not make a certificate for the amount of principal and interest? Every caution was taken by the Legislature to shew they meant something beyond a purchase: Had they designed a purchase they would have required the principal and interest to be calculated, and have directed a certificate to issue at once for their amount, not doing it shews they did not design a purchase; an individual would have given his bond for the amount; therefore the case of the depreciation New-Loan certificates are very different; in the depreciation there was no margin, they meant different things, a special species of security, to contain the essentials of the debts thereby to be secured, and the annual payment of interest which shall have been made thereon, to be prepared by the Treasurer, delivered to the Compt. Gen. to be by him countersigned and delivered out.

Then, Sir, I trust from these observations, that the case of the issuing of depreciation and New-Loans are very different, and that the Legislature meant or intended this as the most convenient mode to facilitate the payment of interest on the New-Loans. All these circumstances mentioned to be recorded in the margin, and directed by the Act are as good as if they had a place in the very body of the certificate, and are equivalent to a part of the contract.

The marginal notes and the printed part are one contract, as if they had borrowed or received per marginal notes such a certificate and to such an amount specified in the margin: That the Comptroller-General or Treasurer might not be at the trouble of going over and over again the Continental certificates, but be able at one view on what sum interest is to be calculated.

Then, Sir, if these things be so, it appears by this Act of Assembly that the New-Loans were never an evidence of a money debt but an evidence of a special contract to pay the interest, and the principal and interest to be ultimately paid by the United States.

The

The next consideration is, that of whatever nature the engagements of *Pennsylvania* were, they were done away by the repealing law of March 1789.

All the laws preceding that Act were of a temporary nature, calculated to remove the difficulties of the times, and only to continue until Congress should provide, which provision was now made, the 27th of March 1789 being the day so long wished for, now the temporary relief is withdrawn (Mr. *Wilcocks* read the preamble of the Act of 1789) with regard to the private intentions of the Legislature there can be no doubt of their designs, they could mean nothing less than the doing away all obligations under which they lay by the preceding laws.

Nothing remained but to make the provision, which is absolutely and completely done in the subsequent sections of the Act. In the case of two individuals, one of whom is indebted to the other, if a law is passed or a circumstance takes place to acquit the debtor from the payment of principal and interest, can any obligation remain? Is not the debt discharged? How then, is it possible any thing else can be meant here, than completely to annul the debt?

The third section directs the manner in which the exchange was to have been effected, and when that was done, they had performed all that in justice and equity they could be called upon to do.

It was not a contract for the payment of money but only payment of interest for four years, nothing remained but directing the manner of returning the Continental certificates; *Pennsylvania* then had acquitted herself with honor and character from any engagement she was under from the New-Loan creditors.

It is remarkable that the words *pay* and *secure* are made use of at the issuing of the certificates by the law of 1786, which are also used in the repealing Act of March 1789, just commensurate to the law of 1786; this precision is worthy of attention, it makes the repeal commensurate to the obligation, and the obligation

tion to be annulled by the use of those words—meaning *to pay* the interest, and *to secure* the return of the Continental certificates; and being used in the repealing Act designed to revoke the pait.

Whether or not this law was repugnant to the Constitution of the United States, if the above are right, the Constitution need not be attended to, because no contract was impaired by this commonwealth, the contract being in its origin only conditional. Therefore, Sir, I apprehend the law of 1789 is not to be taken in the defendant's view, but as an Act of the Legislature of *Pennsylvania*, intended to do good in the different means pointed out by the same.

The Constitution of the United States, so far from deviating from, actually concurred with the repealing Act of March 1789 in defeating the obligations of the Act of 1786, and repealed the contract of itself: Because the funds were thereby transferred to Congress.

Let us attend to see in what manner the contract was impaired, if at all. The funds were a part of the contract, as much so as any other. The New-Loan holders assented to the change, and consented that the revenues and imposts should be taken away from this commonwealth and be for ever vested in the United States; the New-Loan holders were represented in convention, then that part of the contract was repealed, annulled and made void.

Therefore it may be said with more truth, that the Constitution repealed the obligation of the Act of 1786, than that the law of 1789 is in violation thereof, and against the spirit of the Constitution.

If then the law of 1786 was not a purchase of the certificates, but an engagement such as I have mentioned, the State is fairly and honorably discharged, and she disengaged herself by offering the holders the certificates which she had received.

I will now proceed to consider whether the New-Loans are redeemable under the Act of the 10th of April 1792.

When

When we come to consider that law, we shall probably find that the Legislature intended to place all the financial engagements of the State on as simple a footing as possible, by ascertaining the *extent* of all her *debts*, and to discharge the most of them by *payment*, the means by which this was to be accomplished was a sale of 3 per cent. stock therein enumerated.

The first section directs the payment of interest on all certificates that bore interest to the time they became due.

The second section authorises the sale of 3 per cent. stock as much as should have been necessary to redeem,

1. All certificates bearing an interest of 6 per cent.
2. Six per cent. purparts on the deferred stock of the United States.
3. All three per cent. purparts; and
4. Dollar money.

The above section comprehended every species of State debt, the unfunded depreciation and New-Loan debt excepted; the interest only of the New-Loans was an engagement, and the unfunded depreciation being supposed to be in the hands of speculators with a long arrear of interest, being bought up at a low rate, It was thought it might as well rest to be redeemed at the Land-office.

Let us see if it is possible, they ever contemplated the redemption of any other debts than those enumerated in the second section.

The third section provides for the sale of 3 per cent. stock, and giving warrants for its delivery.

The fourth section directs the Comptroller and Register-General to keep the accounts.

The fifth section provides how they are to be paid on the 1st of July, after due notice be given, and the certificates be deposited.

In this manner and thus far, it should seem, ample provision had been made to pay off these state debts. It was not known at this time that Congress would absolutely open their loan.

Then

Then comes the sixth section, which we consider and contend as a proviso, as much as if the Legislature had said that you shall at all events have your money, but there is an event which yet may happen, if Congress should open their loan, we will impose an additional duty, that is, that you the holders of certificates subscribable to the loan so to be opened, shall not be treated and paid in the manner mentioned in the five foregoing sections, but you shall be obliged to one thing more, namely, subscribe your certificates to the loan, and transfer them to the State-Treasurer for the use of the commonwealth, and then you shall receive your pay. The redemptive powers of the 6th section, were never designed to exceed those in the 2d section, and was only a different modification upon the event of Congress opening their loan. (*Mr. Wilcocks then read the 6th section.*) All the subsequent sections of the law are eventually provisional, in case the price prescribed could not be procured for the stock, that the notice in the fifth section be delayed, &c—I say every other part of the sections are provisional.

But, Sir, we are told this 6th section is an independent clause, and conceived so extensive as to oblige the state to redeem whatever Congress should have assumed. Even old bills of credit must be paid by the State if Congress would assume them. (*Mr. Wilcocks was interrupted by Mr. Lewis, who said, Bills of Credit were not included in the testimony. Mr. Wilcocks repeated that it was given in evidence, as the opinion of the Comptroller-General, that if old bills of credit were assumed by Congress, the State would be obliged to redeem them.*)

It is a good rule in the construction of statutes, to consider all together, but how much more so in the present instance of the individual Act of the 10th April 1792, the sixth section should not be considered independently, but connected with the other sections of the same Act.

This is plainly and obviously militating against the defendant, and his Counsel; they say the State committed

ted herself to Congress; this construction is narrow; the true and just construction is not to enlarge the bounds of redeemability; in that case the sixth section is a proviso to the second. When two constructions are brought into view, the one absurd and inconsistent, the other rational and consistent, arising from a comparative view of the whole Act, no doubt can be entertained which of them will be adopted. Shall a construction so insulting to the integrity and understanding of our Legislature be courted? To say, that they would commit themselves to Congress, that they blindly threw themselves into the arms of Congress, so unrestrained, so regardless of their duty, void of prudence and caution, as to suppose that the sixth section was more extensive than the first and second, as to embrace every description of State debts; we will redeem whatever Congress will assume!

No Act of Congress was then extended; it appears an unreasonable and extravagant supposition; the idea cannot be admitted on any other ground, but that the Legislature were remiss, and did not do their duty.

But the law of February 1793, providing for the unfunded depreciation certificates being redeemed, shews they considered nothing redeemable but what the second section comprised. (*Mr. Lewis asked Mr. Wilcocks, Do you produce a legislative construction after the fact happened, as a proof where many of the unfunded depreciation certificates were redeemed? Mr. Wilcocks said he meant to shew the sense of the Legislature, that by this law of 1793, their sense of the law of 1792 was to exclude the unfunded depreciation; therefore the New-Loans could not be included.*)

It therefore appears that New-Loan certificates were discarded by *Pennsylvania*; the State had acquitted herself; the arrears of interest on them were to be paid; consequently, it is impossible that New-Loans could be redeemed by the Act of 1792, when in 1793 she declared that even unfunded depreciation certificates were not contemplated to be redeemable by the Act of 1792.

Hence,

Hence, then, Sir, I trust it appears evident, 1. That New-Loans never were a State money debt, at all. 2. That they were never subscribable, and 3. That they were never redeemable.

THIRD ARTICLE.

On this I will only make a single observation now, that is, that I will observe on it, when I speak of the criminal intent of the defendant.

FOURTH ARTICLE—*A violation of the Constitution.*

But say the learned Counsel for the defendant, there were ways and means, there is a fund for the redemption of the New-Loan debt, under the heads of *claims* and *improvements*, by the act of the 7th of April 1791. By this, say the gentlemen, it is provided “to pay all warrants hereafter to be drawn for *claims* and *improvements* by virtue of any law or laws of this commonwealth.” This appears to me one of the most singular ideas that hath been started in the whole course of this most important cause; 1. If it was liable for the New-Loan debt, still this fund was not named, the Comptroller did not draw out of this fund, but out of the fund created by the sale of 3 per cent. stock under the act of April 10th, 1792. Therefore this argument and the certifications of the Comptroller-General, must be diametrically opposite. This seems opposite to the knowledge of every person who is any ways conversant in legislative appropriations.

This fund was a few years before limited to £. 10,000, and therefore insufficient for the purpose; it is true, by the act of the 7th of April 1791, the limitation is taken away, and makes it the last appropriation; every other obligation is done away, but still holds with equal force, yet still the first act shews their idea of its probable amount, out of this claim Mr. *Rittenhouse* and others, were paid, for surveying the *Lancaster* road. I apprehend the idea of the Legislature was to make it a fund on which the Legislature might draw, but not to be drawn on, at the discretion of the Governor or other officers. Then there is a necessity for an order of the Legislature

gislature that that fund be drawn on, otherwise there would be no occasion for any appropriations at all, this would be a general subsisting fund, and would answer all demands without any specific appropriations.

That my construction of the act is a reasonable one, and their construction unreasonable, I will mention the Act of the 4th April 1792, which directs certificates to be granted for settled demands without interest, but no warrants should issue, only reports to be made of them to the Legislature of the number of unprovided debts without fund for payment; where was the necessity of this act, where was the necessity of reporting to the Legislature, if the funds for *claims* and *improvements* were to answer all claims and demands without any further order from the Legislature?

Having now arrived at the usual time of adjournment, I should be glad the Senate would please to adjourn. Adjourned.

In the minutes of the House of Representatives the following entry is recorded—

“In conformity to the resolutions of the 25th February last, the House resolved itself into a committee of the whole, in order to attend the trial of *John Nicholson*, Comptroller-General.

“The Speaker left the chair, and Mr. *Wynkoop* was placed therein.

“The committee of the whole then proceeded to the Senate-chamber for the purpose aforesaid.

“After some time,

“The committee of the whole returned to their own chamber.

“The Chairman left the chair, and the Speaker resumed it.

“The Chairman then reported that the committee of the whole had attended at the trial of the articles of impeachment against *John Nicholson*, Comptroller-General.

“The committee appointed to manage the trial on the articles of impeachment against *John Nicholson*,

Comptroller-General, reported further progress, and that the Senate had adjourned the further hearing of the arguments on the said trial until ten o'clock to-morrow, A. M."

Seventeenth day of the trial.

TUESDAY, MARCH 18.

Mr. WILCOCKS in continuation.

*Mr. Speaker, and
Gentlemen of the Senate,*

HAVING arrived at the consideration of that point of this business, which respects the criminal motives and intention of the Comptroller-General, and although it is alledged that the conduct of that officer, is not wrong in certifying the subscribability and redeemability of New-Loan certificates, and effecting their redemption under the act of Congress and law of the 10th April 1792; and that his opinion and judgment are innocent, and he is not responsible in a criminal point of view.

These pleas will be inadmissible, when weighed with all the circumstances attending this transaction, consider his sentiments, and his opinion on this subject, how extremely cautious he has been in promulgating his opinion; consider, whether he acted in his official character, and directly contrary to the intentions of the Legislature of his country; let us examine whether he is criminal or innocent, let us attend to the time when he wrote on this subject, what circumstances may favour his intentions, and see whether there are sufficient and reasonable grounds for acquitting him, deliberate well whether his judgment was uninfluenced; if it is possible to suppose he really did believe that New-Loans were assumable and redeemable. Connected with all these

these circumstances, it is to be called an obstinate perverse opinion, and can serve as no excuse or apology. His former opinion, although much relied on, must have been formed from private views, he should have taken advice.

I will recapitulate all the circumstances in his favour, and those against him, and place them in one point of view. It has been much relied on, and is worthy of observation, that his opinion of the subscribability of New-Loans was long before the passing of the act of the 10th of April 1792.

In his letter to *Thomas Smith* (page 271-2) he writes, "It is not presumable the *New-Loans* will be offered."

In his letter to the Governor (page 220-1-2) he writes, "I think too highly of the faith of the public," &c. It is true, he did so, but this declaration was unnecessary, being made at a time when it was connected with the subject of difficulty, namely, that of withholding the payment of interest, in five days afterwards (see letter page 277) it was found New-Loans were not subscribed, all the difficulty was over, consequently the Governor did not answer that letter, nor took any notice of the opinion.

In another letter (page 223) he states the conference and shews his opinion that New-Loans were subscribable; true, and it is equally true, that the conference was founded on an idea, that New-Loans were subscribable.

These are all that are given in testimony that the Comptroller thought the New-Loans were subscribable.

The Governor did not care about the sentiment, he was for another thing, he directed the Comptroller-General to confer with the Secretary of the Treasury, instead of stating to him in an open and candid manner, he only sends him a New-Loan certificate, and the law of 1786, under which they were issued, and withheld the repealing law of 1789, which would have removed every difficulty as appears from his last letters; we find that the Secretary of the Treasury did not know the law
of

of 1789, but as soon as that officer knew that the law of 1786 was completely and fully repealed, that moment every difficulty vanished.

But the gentlemen say, he not only held the opinion, that the New-Loans were subscribable, but also that they were redeemable under the Act of 1792. I request the attention of the Senate in distinguishing the particular periods to which this evidence points, as it is of the utmost importance to determine the degree of innocence or criminality.

After the month of February 1792 we find no intimation of his opinion, that the New-Loans were redeemable or even assumable.

It hath been said, that with regard to the Act of the 10th April 1792, the Comptroller expected the words there made use of would include New-Loans: I presume this was the reason of his objection, and opposition to the passing of that law.

Mr. *Griffith Evans* had no other authority for his conversation; that the Act of April 1792 would include New-Loans, than the declaration and opinion of the Comptroller-General on this head (see page 306) who told him he had been endeavouring to convince Mr. *Gallatin*, that if old bills of credit were assumed, they must be redeemed; Mr. *Gallatin* had just passed out of the office, it rests on Mr. *Nicholson's* veracity, Mr. *Gallatin* was either gone or did not hear this, but he unequivocally denies the conversation; with respect to the unfunded depreciation, Mr. *Gallatin* supposed that to be included, and thought it immaterial whether they were redeemed that way, or through the Land-office. (see page 296.)

Again: It is said, that he subscribed New-Loans openly so as to hazard detection and disgrace. *Answer.* Not so very openly, as facts and events will shew, he did not communicate his opinion to any other officer, his opinion was singular indeed; his conduct was more secret than open, the most intelligent brokers and others had no idea of their subscribability.

The arrangement of the business was such, that no officer of the government saw the certificates intended to be loaned but the Comptroller-General. No man could see what he was doing, and yet these are the arguments adduced to shew the innocence of the Comptroller-General, respecting his opinion of the subscribability and redeemability of New-Loan certificates!

It will be necessary in this place to recapitulate all the circumstances, which came within his knowledge in direct opposition to this opinion.

The Comptroller-General must have known, that the Act of March 1789 repealed all the obligations of the State respecting New-Loans. He must have known that his opinion was wrong at least, as he was acting in direct opposition to an express law.

The Comptroller-General says, New-Loans are a State debt. They are not so, says the Legislature; he insists upon it that they are; nay, subscribable and redeemable too! Every department of government considered them as no longer having an existence; but the Comptroller-General in defiance of the Legislature, persists on their existence as a State debt! The Governor in his communications to the Legislature, referred to all the debts and engagements of the commonwealth, but omits New-Loans among the debts, and when he mentions them, he only adverts to the arrears of interest due on the New-Loan debt.

The committees of ways and means officially reported in like manner. His own and the Register-General's statements were made in the same manner. The Legislature themselves had by a parliamentary declaration provided for the payment of the balance of interest on bills of credit; this shews, that in doing so, they acquitted themselves of all their obligations as to New-Loans; and by providing for the interest they had abandoned the debt.

The people, the citizens of *Pennsylvania*, considered the repealing Act as a good and valid law, and submitted to it; and in conformity to it, and at the call of the

the State came forward and out of £. 1,819,415 : 18 : 9, they had exchanged all under it but about £. 50,000 as appears by his letter (page 220-1-2.)

And shall the Comptroller-General, an officer of high trust under the commonwealth, with all this knowledge and information in his own breast, pretend to say "I am innocent?" Shall he excuse and justify this, by shewing, that, he thought the year before, that the New-Loan certificates were assumable, subscribable and redeemable? Is it reasonable, or can we suppose after all this information in the Comptroller's own knowledge and breast, that he could entertain an honest opinion under all these circumstances, and in direct opposition to all this great body of information, that the New-Loans were subscribable and redeemable? I say, in opposition to the sentiments of the Governor, the Legislature, the committees on ways and means, and all the officers of government.

It appears to me, that if this opinion ever existed, it must have been formed upon principles of obstinacy and perverseness, adhered to against the dictates of reason and good sense, and not agreeable to the better light and information of a well informed mind.

If, then, Sir, such an affected opinion can be formed and acted upon, in violation of law; nay, admitted, as a justification and apology; where shall we find official duty, honour or integrity?

There is another circumstance in this case worthy of consideration, that, in point of time; all evidences are prior to the passing of the Act of the 10th April 1792. He never communicated to any of the official characters of the State that the Act of April 1792 would include New-Loans. What are the circumstances respecting his interviews with the gentlemen of the Senate and House of Representatives? He was opposed to the passing of that law! He said it would be injurious to the State! What were the objects of these communications! Undoubtedly they were for some consideration! When the law was about to pass,

pass, we find him hastening from one public character to another. In general, we find him manifesting great zeal for the interest of the State, as this Act would be injurious to her interest.

At the same time we find him manifesting equal zeal for his own plan of finance, to help it to go down; many of the witnesses do not remember his objections, yet no man approved of his plan. What were his objections to the bill? They are of a very trivial nature—
 1. *The price too high!* 2. *Ordering all the 3 per cent. stock to be sold at once, &c.* I appeal to you, if these objections were not perfectly nugatory. He urged his plan of finance with all possible warmth: If I understand his plan right, its object was not to pay off any of the debts of the commonwealth, but to fund them, and New-Loans amongst the rest.

I infer from this species of opposition to the one, and zeal to support the other, that the Senate will judge the motives; in all these conversations hath he disclosed to any of those members whom he consulted, that the bill might injure the public, or does he produce any means whereby the commonwealth might not be hurt? Has he mentioned to any person that any debts were assumable and redeemable under the sixth section, other than those specified in the second section? Certainly not.

If motives of public duty induced him to oppose the law of April 1792, if he saw that individuals would speculate to the disadvantage of the State, why did he not say so? Does not all this stir in favour of his own plan, and against the bill, shew that it was not for the good of the State? and because he liked his own plan of finance better.

Further, in a conversation with Mr. Gallatin, Gallatin warned him that his opinion was contrary to that of the Legislature, and expressly informed him, that although unfunded depreciation might be redeemed under the sixth section, yet he said it was not so intended. (Mr. Morris, the Speaker of the Senate, observed, that agreeably

agreeably to his notes, the Comptroller had said, according to the testimony of Mr. Thomas (page 287) "The bill as it stood would admit of constructions that would open a door for speculation," and "that some individuals would take advantage to the loss of the State," according to the testimony of Mr. Montgomery (page 290.)

Mr. Wilcocks proceeded, and said (addressing himself to the Speaker) you have altered my recollection. Mr. Gallatin made this observation on the Act, and yet he (Mr. Gallatin) allowed unfunded depreciation certificates were redeemable under the sixth section of that law.

It may be said, and it is true, that Gallatin's opinion was not to be pursued, nor admitted as the true construction in opposition to the words of the law. It is evident from the information of Mr. Gallatin to the Comptroller-General that he knew the sense of the Legislature, and that New-Loans were neither subscribable nor redeemable, nor embraced under that law; he should therefore have hesitated and applied to the Governor for advice and have consulted legal characters for official explanation.

Had he done this, how easy would it be to prevent the subscription of these New-Loans, and subsequent loss to the State; it ought, at least, to have excited some doubt, and to have procured the Governor's opinion, and if necessary, the Attorney-General's explanation.

But in order to conduct his speculation with success, he disregards all Mr. Gallatin's observations, he did not, as his duty required of him, apply to the Governor, he not only neglected to do this but he proceeded in a manner to deceive the Governor.

When the Governor called for a statement of the 3 per cent. stock to be sold and of the debts to be redeemed under the Act of the 10th of April 1792, the Comptroller rendered only those redeemable under the second section, and to keep his transactions further concealed,

ceased, he does not specify New-Loans in his certificate to the Governor as one of them.

But say they, How could he do it, the loan of Congress was not then open? Poor excuse! he was not asked for a statement under a particular section of the Act, the call was general and extended to the whole law. (Mr. *Lewis* asked for the letter alluded to, calling for the statement. Mr. *Morgan* went for the letter into the Secretary's office (see page 232) which being read, and not answering the ideas of Mr. *Wilcocks* respecting the *general call*, for the letter called for no statement; Mr. *Wilcocks* said, that Mr. *Dallas* in his testimony declared that the call was general. This assertion was answered by Mr. *Lewis* with no! no!!

Mr. *Wilcocks* then proceeded,——Lastly, we find the certificate to the Governor was not explicit enough to have decided what debt was to have been redeemed. The New-Loans might have been subscribable, yet not *redeemable*, as we contend that *subscribable* and *redeemable* were not convertible terms: After all it must be submitted to the Senate, whether they were subscribable, and if so, whether they were redeemable. I shall now dismiss this head, and proceed to the

FIFTH AND SIXTH ARTICLES.

By the fifth article, the Comptroller-General is charged with purchasing New-Loan certificates from those who came to his office for the purpose of exchanging them.

In the sixth article he is charged with taking measures in his private capacity for preventing the re-exchange of New-Loan certificates after they had been deposited with him.

We are now arrived at that part of the subject, which is free from embarrassing constructions, we may now even for the present admit that they were subscribable and redeemable. Here it is not necessary to possess the abilities of a lawyer. These last articles depend upon the principles of MORALITY and PRUDENCE! the degree

of guilt will depend upon the intent. Has the Comptroller-General acted with rectitude and propriety of intention? Has he acquitted himself of the duties which other laws imposed on him, or not?

These charges do not depend on the violation of Acts of Assembly, or Legislative Statutes, but they depend on moral principles interwoven with the common law as applied to all official characters. The crime is discovered by first ascertaining the duty of the Comptroller-General, and by examining, whether he has acted in opposition to that duty. If he has acted against it, he is guilty, the degree of guilt is determined by circumstances. The wrong, if done, the wilfulness, motives and inducements of the doer of the wrong, and the degree of criminality, will depend on circumstances of aggravation or extenuation. That he is guilty in some degree or other, appears from a conviction that he hath violated these principles of integrity, morality and prudence, in the execution of his official obligations. This will be evident from the testimony of Mr. *Biddle and Son*, and Mr. *John Oldden*.

It is in evidence that young Mr. *Biddle* deposited a certificate agreeably to Act of Assembly, and a printed exchange was filled up. In the instance of *Oldden* he rendered his certificates for re-exchange, went home, was desired to call again the next day; in the evening the Comptroller-General wrote to him, offering him the assumable value, *Oldden* being a little struck with the offer, supposed they must have been of some advantage to him, came up to his office, the Continental certificates were not yet ready; he came up again the next day, still the exchanges were not ready; he told the Comptroller, "give me thirty dollars and their nominal value, and you shall have them."

Is this conduct right or wrong? Where is honor, where is integrity, where is uprightness or equity? Is this conduct reconcilable with the principles of duty, prudence and official agency? The council for the defendant

sendant have laboured to shew that the Act of March 1789, was void, as operating against the Constitution of the United States. Let it be admitted, yet it cannot be pretended that that part of the Act is void, which directs the Comptroller-General to exchange the Continental certificates for the New-Loans, many may be desirous, is an expression much relied on by them, and is cited from the law; with this plain direction "*well and faithfully to do his duty*," under the sanction of an oath to act honestly and uprightly towards the Commonwealth, he is directed by the Act of March 1789 to exchange when required. Yet he steps from his station, and purchases *in* the New-Loans.

I say, under an oath well and faithfully to execute his office, what does he do? These Gentlemen came forward and offered their certificates for exchange, and deposited them for that purpose, he receives them, appoints a time for the purpose of exchanging them, we find him stepping forward, offering to purchase, nay, actually purchasing the same certificates.

Surely, Sir, this is an high misdemeanor, if any such thing as misdemeanor can be found any where; although it is mentioned in the articles that New-Loans on deposit, became the property of the State, this is not the gist of the charge, but only a circumstance of aggravation.

The charge is, his preventing the execution of the act, and heightening the offence by purchasing the certificates, defeating the law, and speculating on them to his own great gain, and to the loss of the commonwealth. I repeat it, Sir, it is mentioned here only as a circumstance; but I will now say, that when the certificates were deposited; they became the property of the commonwealth, and the consequence was that she had a property in them, and no body had a right to return them.

It is evidently and manifestly proved, that the certificates were in the possession of the commonwealth; the State had a property in them. Who had the authority to surrender the Continental certificates for them? The Legislature spoke by its laws, directing the exchange

to be done. It was wrong in the Comptroller-General to do it in any instance; but we do not come forward to impeach him for merely returning the certificates when he had no interest himself. It was the interest which he held in these certificates, every such interest must be connected with correspondent property. The State had a property, and she gave no power to any person to take it from her.

I beg the attention of the Senate to the recollection of the ideas of property, we know that bare possession gives a property in cases of larceny.

When the certificates were in his possession, they were in the possession of the State, and not in the possession of *John Nicholson*: occupancy gives a right. A horse lost or stolen from one man, and found in the possession of another, leather from a shoemaker, or cloth from a taylor; the possession of any of these articles is enough, the indictment is always for the property.

Here, Sir, the commonwealth had an interest and a property: The gentlemen once made a concession, that no exchange was completed until the indents were tendered. I rather think Mr. *Oldden* had no indents to pay, consequently the balance was due to him, and Mr. *Nicholson* repaid it; of course the State had them to pay, therefore the exchange should be completed when the certificates were offered.

I apprehend then that this was a most unwarrantable and unjustifiable proceeding in the Comptroller-General, to step forward to take this property which belonged to the commonwealth, and purchase them.

The Gentleman who spoke last, said, that *Pennsylvania* had not yet decided, how far she should restrain the public officers from dealing; he mentioned that a law was passed prohibiting vendue masters to purchase at their *own sales*, that the General Government prevented the Secretary of the Treasury and the clerks in his office from speculating in the funds, but that no law existed to prevent the Comptroller-General from dealing in this species of property! We do not bring a charge
against

against the defendant for purchasing certificates through the medium of brokers, or dealing in stock, but only in violating his trust in the foregoing instances. (Mr. *Tilghman* interrupted Mr. *Wilcocks* in this place, and remarked, that interest was due by Mr. *Oldden*, Mr. *Wilcocks* said, he took it as the witness gave it in his testimony which see page 243-4-5.)

SEVENTH ARTICLE.

The last article charges the Comptroller-General, that after the exchange was actually completed, he subscribed a New-Loan certificate for thirty-two hundred odd pounds, in his own name, and had it redeemed at the Treasury, and received the money for it.

The history of this certificate is, that Mr. *McConnell* was possessed of it on the 30th March 1790, that it was issued in his own name for £.3275:19:4—that he delivered it on that day to *Blair McClenachan* (Mr. *Morris* the Speaker interrupted Mr. *Wilcocks* here and said, the entry was made on the 6th of March, and not on the 30th.) He entered it at the Treasury on the 6th of March 1790, and received interest in September 1790, from the Treasury. Mr. *McClenachan* swears that when he went to the Comptroller's office to exchange his certificates, he carried ALL his certificates with him, and received the corresponding Continental certificates in exchange. He swears unequivocally, that he never sold or commuted any certificates with the Comptroller-General in his life. It appears, the Comptroller subscribed this identical certificate.

If these facts are true, I forbear to make any further animadversions on them! It hath been attempted to raise doubts respecting the witness who supports this charge, his veracity and integrity hath not been impeached but his memory.

His deposition hath been treated in such a manner, as no human testimony could stand the test. The Gentleman did not read the interrogatories and answers throughout. I cannot tell what evidence could stand such scrutiny.

It appears Mr. *McClenachan* swears with caution, and that he is not inimical to the defendant; he swears with certainty where his memory serves him, where he could refer to unerring documents, he did so; where he was uncertain, he doubted! (Mr. *Wilcocks* then read the interrogatories and answers, and commented on them, see page 253 to 260.)

His refusal to answer four interrogatories will be excused, when their nature is considered, some of them look as if calculated to affront him (18th and 19th read) Sir, *his feelings were hurt*, it excited his resentment (20th read) perhaps he thought it implied some suspicions not very honorable (21st read.) None of these contains a question calculated to draw an answer material to the enquiry about the certificate, about which the enquiry was made: which induced him to say they “*did not deserve an answer*,” it must be confessed they were calculated to confuse and irritate him.

Mr. *McClenachan* swears he never commuted with *John Nicholson*. This certificate is subscribed by Mr. *Nicholson*, Mr. *McClenachan* subscribed all his certificates. Where is there any room for any other conclusion, but that Mr. *Nicholson* had exchanged it. The evidence under this last charge is striking and conclusive; if there was a doubt, what can be easier than for the Comptroller to bring forward information where he got it? If his brokers bought it, they have a bill, they always keep an account.

Is it of such a nature, and *so trivial*, as to merit no attention? A certificate for three thousand odd hundred pounds! Or is it so *conclusive* as to deserve no answer? No attempt is made to shew it came otherwise into the hands of Mr. *Nicholson*.

His books of exchange are so irregularly kept, as that it is impossible to get any thing from them: They are not kept agreeably to the directions of Council, nor at the proper times. It is not to be pretended that the books can be balanced day by day, but it may reasonably be supposed, that when the exchanges are completed,

pleted, then things might be known; these exchanges exhibit no receipts; they are not in the hand-writing of the party; you find only the initials of their names. There are forty-six odd thousand dollars in two entries. No individual certificates are identified or specified. What use can be made of books of this sort? *

I will leave the cause with the Senate, in full confidence, that the decision of the same will be the result of mature consideration, and consonant to the state of facts submitted to the enlightened minds of this honorable body. Adjourned.

In the minutes of the House of Representatives the following entry is recorded—

“ In conformity to the resolutions of the 25th February last, the House resolved itself into a committee of the whole, in order to attend the trial of *John Nicholson*, Comptroller-General.

“ The Speaker quitted the chair and Mr. *Wynkoop* was placed therein.

“ The committee then proceeded to the Senate-chamber for that purpose.

“ After some time,

“ The committee of the whole returned to their own chamber.

“ The Chairman left the chair, and the Speaker resumed it.

“ The Chairman then informed the House that the committee of the whole had attended the trial of *John Nicholson*, Comptroller-General.

“ The committee appointed to manage the trial of the articles of impeachment against *John Nicholson*, Comptroller-General, reported further progress, and that the Senate would proceed in the further hearing of the counsel at ten o'clock to-morrow in the forenoon.

Eighteenth

* It was stated by Mr. *Tilghman*, that these books had been laid before the SUPREME EXECUTIVE COUNCIL agreeably to their instructions, every week, so that, they had an opportunity to judge and give further directions if they were not kept as they ordered.

Eighteenth day of the trial.

WEDNESDAY, MARCH 19.

THE Senate met as usual, the members of the House of Representatives in committee of the whole attended, the consideration of legislative business being postponed, and the Court called.

Mr. LEWIS spoke as follows—

*Mr. Speaker, and
Gentlemen of the Senate,*

THE defendant stands impeached on seven articles of high crimes and misdemeanors in his official capacity as Comptroller-General of this commonwealth. The Representatives of *Pennsylvania* have pledged themselves to make good their charges, and to add countenance and influence to their prosecution, they have at a very great expence to the commonwealth, abandoned their duties elsewhere to pay daily attendance here. To disappoint them in their favourite object and to defend him, is the occasion of my troubling you at present. It is to be regretted that my indisposition will prevent me from rendering him that justice to which I deem him entitled: But it is no small consolation to me that I have been preceded by able colleagues, and if I had not yet that I appear before impartial judges who will be no less able than willing to render him ample justice.

I have always thought that *Mr. Nicholson* was possessed of too many and too extensive powers to be entrusted to any man, and if the question at present turned upon this, I should have been far from advocating their propriety. If this was wrong it was not however his fault, but it rested with those who thought proper to entrust them to him, with so few checks or means
of

of controul. I cannot however but consider this as the real grounds of accusation, and to lament how degrading it is to human nature, that she affords so many instances of men high in popular favour, becoming envied, suspected, persecuted, hunted down and ruined, so that the old adage of *hosannah* to day and *crucify* him to-morrow, is not yet out of date.

As the doctrine which I have advanced with respect to extensive powers entrusted to an individual applies to the *accused*, there seems to be an exception to the general rule, and my mind is much changed, since I have seen a mountain so long in labour without even producing a *mouse*. The keen-eyed and quick scented committee of investigation, of hunters and of informers, who have probed every channel of information, and searched every corner for intelligence, have with unwearied industry traced all the uncounted millions and tens of millions with which he had been entrusted, and it now appears that THE TEMPTATIONS HOWEVER GREAT COULD NOT CORRUPT HIM since nothing has been found against him except with respect to the New-Loan certificates. Hence I am induced to believe that the public confidence was not misplaced. Months of laborious industry have been employed by a committee constantly sitting during the recess of the House, with free access to his books, papers and official documents, and yet they have been able to bring forward nothing else against him. He has undergone this fiery ordeal of more than inquisitorial persecution; and if he shall not be found guilty, his character must, like pure metal doubly refined by an over severe heat, appear with unexampled lustre.

The charges are of the most serious nature;—wilful and corrupt violation of the law! wilful and corrupt disregard of official duty! wilful and corrupt violation of his oath! and all this from motives of private gain and sordid lucre! and all this too, at the expence of the public who had confided in him! If all these things are true, an unanimous vote of condemna-

tion ought to take place, but if they are unfounded, an unanimous acquittal should be the result.

The accused labours under disadvantages which even common culprits do not experience. In ordinary cases an unanimous voice is necessary to a conviction; not so with respect to him, and therefore more than ordinary proofs should be required. Again, Mr. *Nicholson* is charged and boldly too, with a violation of his oath of office. On this ground too, the most conclusive evidence should be required. On an indictment for perjury two witnesses are necessary to a conviction, because where there is but one oath of guilt, there is oath against oath, and truth hangs in an equilibrium. 10th *Mod.* 194. 4 *Blac. Comm.* 351. This principle is surely applicable upon the present occasion, where the defendant is charged with a violation of his oath of office, and it will be found that this charge is at most supported by the treacherous and confused memory of Mr. *Blair M'Clenachen*.

We are told, Mr. Speaker, that this prosecution merits peculiar attention from the respectability of the accusers, and a line of distinction favourable to them has been drawn, between an impeachment and a presentment by a grand jury. Of this respectability and of the propriety of this line of distinction we have not however any proof, nor am I at all satisfied with it. In public bodies heat too frequently takes place, and passion too often bears sway. When that is the case, the judgment is too often warped, and the innocent not unfrequently fall victims to the rage of party. This is not the case in presentments by grand juries. *There*, generally speaking, the accused meets his accuser face to face before the magistrate. They meet on equal grounds, the allegations against him are heard and he has an opportunity of vindicating his innocence. This palladium of sacred rights is it is true but seldom refused in the *British* House of Commons; where it is not unfrequent for the party accused to be heard at the bar previous to the articles of impeachment being voted
against

against him. The same indulgence (if an indulgence it is to be called) was upon a late occasion afforded to Judge *Hopkinson*, and had the House of Representatives been worthy of that respectability which the learned managers have been pleased to impute to them, I cannot but think, that the same measure of justice would have been meted to Mr. *Nicholson*: I nevertheless trust that clothed as he is with conscious innocence and shielded with that coat of armour which truth and virtue never fail to afford, he will be able to baffle the views of his *respectable* but heated and misguided accusers.

We have been instructed, Mr. Speaker, by a long and laboured, though rather clumsy account of the rise, progress and *necessity* of impeachments in *England*, and we are told that they are intended to prevent great and mighty offenders from escaping punishment for flagitious crimes by an over-bearing influence. However true this may be, I cannot see any necessity for its discussion here. Our own constitution and our own laws have erected ramparts of safe-guard round the innocent, while they have provided means of chastisement for the guilty, and to them only should our appeal be made. By the eighth section of the ninth article of our Constitution, it is provided that “no warrant shall issue to seize any person without probable cause supported by oath or affirmation;” and the most solemn oath is required from every grand juror in order to prevent presentments of the innocent, or the crimes of the guilty from passing unpunished. In monarchical governments where the royal favour leads to a distinction of ranks, the reason assigned for impeachments may perhaps be a just one, but in a republican government where no such distinction prevails, it is as different as a beggar in his cottage wrapped in his rags can possibly be from a monarch on his throne with his diadem sparkling upon his brow. Here the law is supreme—it neither admits nor knows of any influence in its administration; an administration which is too pure to oppress the poor, or to screen the rich; to chastise

flife the humble innocent, or to let the haughty guilty go free. It neverthelefs admits of impeachments; not upon the ground which has been mentioned, but upon a much more fubftantial one: The innocence or guilt of a public officer may and often does depend on a variety of nice intricacies of law, which but few jurymen are competent to determine, and therefore our Conftitution wifely declares that “The Governor and all other civil officers under this commonwealth fhall be liable to impeachment for any mifdemeanor in office.” It is therefore evident that the humbleft man in office is liable to impeachment for any mifdemeanor in office, and that no man however wealthy he may be, is liable to impeachment for any other caufe; and hence it results, that all the inftruction which we have received on this head was ill-timed, and could only have been intended to miflead or to make a vain parade of learning.

There is one thing, Mr. Speaker, which my client has juft caufe to complain of. The Houfe of Representatives, (fee page 108) after exhibiting their charges, pledged themfelves to offer proof of the premifes; but upon what grounds did they thus pledge themfelves? Why as to the very *effence* of the third article it was on the hear-fay of the committee of impeachments; founded on the hearfay of the committee of ways and means; founded on the hearfay of a man *not under oath*; and they afterwards materially altered that charge, on a *chit-chat* converfation between the fame man, and a member of the Houfe, as it was reported to the Houfe by that member, and without requiring any oath from that member or his informant, or taking any trouble to enquire into the truth of it.

By this extraordinary procedure has the defendant been deprived of that fecurity to which every man is by the laws and conftitution of his country entitled; and this too by the very men who have thought proper to impeach the defendant for a fupposed violation of the law and conftitution! If he is guilty, they have certainly

tainly been so complaisant as to keep him in countenance, and he may justly retort upon them *Turpe est doctori cum culpa redarguit ipsum*.

When it is considered that they are the sworn guardians of the laws and constitution of the country, they must appear but with an ill grace as the accusers of others, at the moment of committing so flagrant a violation on their part. I allude to the third article which charges that the defendant did "not consult the Register-General nor the Governor," and yet those who made this charge, knew no more about the truth or falsity of it, legally speaking, than any man in *Europe*. It appears indeed that Mr. Gallatin told the House, that Mr. Donaldson had told him so, but it also appears, that the House upon this information, unsupported by any oath or enquiry before themselves or a committee, voted the charge true; and what aggravates their conduct (if it be capable of aggravation) is, that Mr. Gallatin, a leading member in bringing forward the impeachment, now swears that *as Mr. Donaldson was an officer of government they thought he might be heard without an oath!* A British peer, when sitting on an impeachment, answers upon his *honour*; when testifying as a witness he answers upon his *oath*, but the House of Representatives have attached to the officers of government, a privilege sanctioned by no experience, and reprobated by the laws and constitution of this country!

So much for the manner in which the impeachment has been brought forward. Whether it is supported or not, remains to be considered.

It may not be improper however to observe, that in writing or speaking, our arrangements should be such, as that, *that* which precedes, should prepare the way for that which is to follow; and that the latter may be the result of the former; else repetition, obscurity and waste of time will be the consequence. Under this idea I cannot think of considering the articles in the order of their arrangement, nor has the Counsel on either side found it practicable. My positions will be—

First.

First. THAT THE NEW-LOAN CERTIFICATES WERE SUBSCRIBABLE TO THE LOAN OF THE UNITED STATES; AND OF COURSE, WERE REDEEMABLE AT THE TREASURY OF PENNSYLVANIA.

Second. THAT THERE WAS AN APPROPRIATION MADE BY LAW FOR THAT PURPOSE.

Third. THAT NO CRIMINAL OFFENCE IS SUFFICIENTLY CHARGED AND PROVED AGAINST THE COMPTROLLER-GENERAL.

Subdivisions will perhaps be necessary for the more clear elucidation of these points.

First position. THAT THE NEW-LOAN CERTIFICATES WERE SUBSCRIBABLE TO THE LOAN OF THE UNITED STATES; AND OF COURSE, WERE REDEEMABLE AT THE TREASURY OF PENNSYLVANIA.

Under this position, we are so far from agreeing with our opponents the learned managers, that the Act of March 27, 1789 abolished the New-Loan debt, created by the Act of March 1st 1786, as to boldly contend, that it left it as it was before, with this difference only, that it was funded by the law of 1786 and unfunded by the law of 1789, and left without the means of payment until some new provision should be made for that purpose.

We say that so much of the Act of *Pennsylvania* of March 1st, 1786, as assumed the debt due to her own citizens from the U. S. was a noble exertion of patriotism, benevolently intended and wisely calculated to add value to their certificates, and inspire them with confidence, when they had but little in the funds of the United States; but that so much of it as provided the means of payment, was originally founded on a breach of faith; was beyond the power of the Legislature of *Pennsylvania*, and if not originally unconstitutional and void, it became so by the adoption of the Federal Constitution. It was therefore the meaning and duty of the Assembly in March 1789 to repeal one part of the Act of 1786, but it had neither the power nor the will to repeal the other part of it.

To determine this, a minute attention to some previous matters is absolutely necessary, and the question will be found to be so important, that it should not be lost sight of in any stage of our enquiries.

All debts due to foreign and domestic creditors of every description, for monies loaned, supplies furnished and services performed for the general defence, were contracted on the faith of the whole Union, and each of those creditors, whether consisting of a nation or of a private individual, had both an equitable and legal claim on the aggregate fund, composed of the quotas of the several states for payment. Foreign nations as well as foreign and domestic citizens, trusted on the security of this aggregate fund and on the plighted faith of the Union for payment out of it, and no one state had the power of extricating herself or her quota of the public debt, from the claim of all the public creditors, by appropriating her quota in favour of any particular class of citizens in exclusion of others—yet it will be found that *Pennsylvania* by her Act of 1786 undertook to make a partial appropriation of her quota in favour of her own citizens, and to the prejudice of all other public creditors of every description. If this shall be found to be the case, and if it shall also appear, that *Pennsylvania* had no such power, it will result as a necessary conclusion, that so much of the Act of 1786 as provided the means of payment of the New-Loan certificates, was founded on a breach of public faith and was under the articles of Confederation unconstitutional—It was therefore the duty of the Legislature in the year 1789 to repeal this part of the Act of 1786—But in 1786 *Pennsylvania* had the power of assuming upon herself the payment of that part of the public debt which was due to her own citizens, either upon any other funds than her quota of the public debt due from the Union, or without funding it at all—By her Act of 1786 she did assume it, and therefore so much of that Act as related to the assumption could not without a breach of faith be repealed by her in

1789—These remarks will afford a sufficient clue for the true interpretation of the law of 1789 and when I shall come to consider its letter and spirit, I trust it will appear that the Legislature of 1789 intended to restore public faith by repealing so much of the Act of 1786 as was founded on a breach of it, but that it did not intend committing a new breach of public faith, by repealing that part of the Act of 1786 which was so far from being unconstitutional as to be highly commendable—As a foundation for what has been said and for that which is to follow, it is now proper to turn to the articles of Confederation which contain the following provisions—

“ARTICLE VIII. All charges of war, and all other expences that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common Treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several states within the time agreed upon by the United States in Congress assembled.

“ART. XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

“ART. XIII. Every state shall abide by the determinations of the United States in Congress assembled, on all questions which by this Confederation are submitted

mitted to them. And the articles of this Confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every state."

By a full and compleat ratification by each of the states, those articles became binding on all of them. They declare that all charges of war and all other expences that should be incurred for the common defence or general welfare, should be defrayed out of a common Treasury, which should be supplied by the several states in such proportion as Congress should from time to time direct and appoint; that taxes for paying that proportion should be laid and levied by the several states. That all bills of credit emitted, monies borrowed and debts contracted by or under the authority of Congress should be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith were thereby solemnly pledged. That every state should abide by the determinations of the United States in Congress assembled on all questions which by that Confederation were submitted to them; and that the said articles of Confederation should be inviolably observed by every state; and the union should be perpetual.

These articles were proposed to the Legislatures of all the states, and finally received an unanimous ratification in the year 1781. Hence they became irrevocably binding, nor could any one state appropriate the whole or any part of her quota, to any other purpose than that of forming one aggregate fund or general Treasury for the payment of all the debts of the Union.

Having shewn what powers were parted with by the several states, and vested in Congress by the instrument just read, it will now be proper to consider what measures were taken in *pursuance* thereof by Congress,

or in *violation* thereof by the Legislature of *Pennsylvania*; since this enquiry will best lead to the true construction of the Act of 1789.

It is probable, Mr. Speaker, that the bad state of my health during the little time which I have employed in preparation, may have prevented me from collecting all that may be material on this subject, but I nevertheless trust that I shall be able to bring forward matter abundantly sufficient to satisfy the honorable Senate that my positions are just. During the long and glorious struggles in which we had been engaged, the veins of patriotic citizens had bled freely at the shrine of Liberty—Their purses and the purses of foreign citizens and foreign natives had been open to our wants, and justice demanded the payment of interest until we should be able to discharge the principal—On the 4th of September 1782 Congress resolved “That one million two hundred thousand dollars be quotaed on the states as absolutely and immediately necessary for payment of the interest of the public debt, and that it be recommended to the Legislatures of the respective states to lay such taxes as should appear to be most proper and effectual for immediately raising their quota of the above sum;” and they further resolved that the first resolution “be referred to the grand committee to assess and report the quota of each state.” On the 10th of the same month Congress adopted a resolution of the said committee fixing the quota of *Pennsylvania* at one hundred and eighty thousand dollars—It has already been shewn that Congress had by an irrevocable instrument, agreed to and ratified by all the states, been vested with the sole and exclusive power of doing this—In pursuance of this requisition the Legislature of *Pennsylvania* by an Act of the 21st March 1783 granted her quota of one hundred and eighty thousand dollars, which had been fixed and called for by the resolutions of Congress already mentioned. Had she stopped here, she would have acted in strict conformity to her federal duties, and would not have exceeded them

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in any particular, but she went further; the interest which under a former regulation of Congress had been payable to certain descriptions of public creditors by bills drawn upon *France*, was by a resolution of Congress of the 9th of September 1782 stopped, with a retrospect to the first of March then next preceding—Considerable arrearages of interest were due and unprovided for—The pressing calls of Congress upon the several states, to be enabled to discharge those arrearages, had not been listened to or had been disregarded by some of them—The distresses of the public creditors were doubtless great, and it is well known that their complaints had become no less so. *Pennsylvania* was not I believe among the delinquent states; and as if feeling for her own citizens only when her feelings should have been alike for the public creditors in general, she by the Act to which I have just referred made a further grant of one hundred and twenty thousand dollars in favour of the former, and at the same time declared that this sum *should be charged to the United States, and deducted from her quota of the debt of the Union*, when the same should be fixed and ascertained.

Without enquiring into motives which may perhaps have been so laudable as to entitle her to an exemption from much censure, it must be admitted, that this last provision was beyond her power; was a violation of the articles of Confederation and a breach of public faith solemnly plighted by Congress and by *Pennsylvania* herself—*Pennsylvania* might make a grant to her own citizens to whatever amount she pleased, but she could not make it out of her quota which she had authorised Congress to mortgage, and which Congress had actually mortgaged to all the creditors of the Union.

These observations are proper here as preparatory to the true construction of the Act of 1789, and when I arrive to that stage of my remarks their utility will be more clearly seen than they can at present.

But to shew these things in a still more clear and forcible point of light, if any thing can possibly render them

them so, I now beg leave to turn to the Journals of Congress of the 18th of April 1783, when with the laudable view of restoring public credit by rendering justice to individuals, it was by nine states resolved, That it be recommended to the several states as indispensibly necessary to the restoration of public credit, and to the punctual and honorable discharge of the public debts, to invest the United States in Congress assembled with a power to levy for the use of the United States the following duties upon goods imported into the said states from any foreign port, Island or plantation.

“ Upon all rum of <i>Jamaica</i> proof,			
per gallon,	-	-	4-90ths of a dollar.
“ Upon all other spirituous liquors,			
	-	-	3-90ths do
“ Upon <i>Madeira</i> wine	-	12-90ths	do.
“ Upon all other wines,	-	6-90ths	do.
“ Upon common bohea tea			
per lb.	-	-	6-90ths do.
“ Upon all other teas,	-	24-90ths	do.
“ Upon pepper per lb.	-	3-90ths	do.
“ Upon brown sugar per lb.	1-2-90ths		do.
“ Upon loaf sugar,	-	2-90ths	do.
“ Upon all other sugars,	-	1-90th	do.
“ Upon molasses per gallon,	-	1-90th	do.
“ Upon cocoa and coffee per lb.	1-90th		do.
“ Upon all other goods, a duty of five per cent. ad valorem at the time and place of importation.			
“ Provided that none of the said duties shall be applied to any other purpose than the discharge of the interest or principal of the debts contracted on the faith of the United States for supporting the war, agreeably to the resolution of the 16th day of December last, nor be continued for a longer term than twenty-five years; and provided that the collectors of the said duties shall be appointed by the states within which their offices are to be respectively exercised; but when so appointed, shall be amendable to and removeable by the United			

ed States in Congress assembled, alone; and in case any state shall not make such appointment within one month after notice given for that purpose, the appointment may be made by the United States in Congress assembled.

“ That it be further recommended to the several states, to establish for a term limited to twenty-five years, and to appropriate to the discharge of the interest and principal of the debts contracted on the faith of the United States for supporting the war, substantial and effectual revenues of such nature as they may judge most convenient, for supplying their respective proportions of one million five hundred thousand dollars annually, exclusive of the aforementioned duties, which proportion shall be fixed and equalized from time to time, according to the rule which is or may be prescribed by the articles of Confederation; and in case the revenues established by any state, shall at any time yield a sum exceeding its actual proportion, the excess shall be refunded to it; and in case the revenues of any state shall be found to be deficient, the immediate deficiency shall be made up by such state with as little delay as possible, and a future deficiency guarded against by an enlargement of the revenues established: provided, that until the rule of the Confederation can be carried into practice, the proportions of the said 1,500,000 dollars shall be as follows, viz.

“ <i>New-Hampshire</i>	52,708	“ <i>Delaware</i>	- 22,443
“ <i>Massachusetts</i>	224,427	“ <i>Maryland</i>	- 141,517
“ <i>Rhode-Island</i>	32,318	“ <i>Virginia</i>	- 256,487
“ <i>Connecticut</i>	- 132,091	“ <i>North-Carolina</i>	109,006
“ <i>New-York</i>	- 128,243	“ <i>South-Carolina</i>	- 96,183
“ <i>New-Jersey</i>	- 83,358	“ <i>Georgia</i>	- 16,030
“ <i>Pennsylvania</i>	205,189		

“ The said last mentioned revenues to be collected by persons appointed as aforesaid, but to be carried to the separate credit of the states within which they shall be collected.

“ That

“ That an annual account of the proceeds and application of all the aforementioned revenues, shall be made out and transmitted to the several states, distinguishing the proceeds of each of the specified articles, and the amount of the whole revenue received from each state, together with the allowances made to the several officers employed in the collection of the said revenues.

“ That none of the preceding resolutions shall take effect until all of them shall be acceded to by every state, after which unanimous accession, however, they shall be considered as forming a mutual compact among all the states, and shall be irrevocable by any one or more of them without the concurrence of the whole, or a majority of the United States in Congress assembled.”

At this time Congress under the most grateful remembrance of the precious tokens of affection shewn by individuals and even by nations to the great cause of American freedom, and wishing to manifest a proper sense of regard for the glorious achievements of the sword of liberty under such benign auspices, appointed an illustrious little band of exalted patriots to prepare a proper address to the several states as a companion to the resolutions last mentioned—on the 26th of the same month the address was reported and agreed to. The nobleness of principle, and grandour of sentiment which it breaths, as well as the sublimity of diction in which it is expressed, are convincing proofs, even if the Journals of Congress were silent, that it came from the pen of a MADISON, an ELLSWORTH and an HAMILTON.

It is time it should speak for itself, and I will therefore turn to it.

“ ADDRESS to the States by the United States in Congress assembled.

“ THE prospect which has for some time existed, and which now is happily realized, of a successful termination

mination of the war, together with the critical exigencies of public affairs, have made it the duty of Congress to review and provide for the debts which the war has left upon the United States, and to look forward to the means of obviating dangers which may interrupt the harmony and tranquillity of the confederacy. The result of their mature and solemn deliberations on these great objects, is contained in their several recommendations of the 18th inst. herewith transmitted. Although these recommendations speak themselves the principles on which they are founded, as well as the ends which they propose, it will not be improper to enter into a few explanations and remarks, in order to place in a stronger view the necessity of complying with them.

The first measure recommended is, effectual provision for the debt of the U. S. The amount of these debts, as far as they can now be ascertained, is 42,000,375 dollars, as will appear by the schedule No. 1. To discharge the principal of this aggregate debt at once, or in any short period, is evidently not within the compass of our resources; and even if it could be accomplished, the ease of the community would require that the debt itself should be left to a course of gradual extinguishment, and certain funds be provided for paying in the mean time the annual interest. The amount of the annual interest, as will appear by the paper last referred to, is computed to be 2,415,956 dollars. Funds, therefore, which will certainly and punctually produce this annual sum at least, must be provided.

“ In devising these funds Congress did not overlook the mode of supplying the common Treasury, provided by the articles of Confederation; but after the most respectful consideration of that mode, they were constrained to regard it as inadequate and inapplicable to the form into which the public debt must be thrown. The delays and uncertainties incident to a revenue to be established and collected from time to time by thirteen independent authorities, is at first view irreconcilable

cileable with the punctuality essential in the discharge of the interest of a national debt. Our own experience after making every allowance for transient impediments, has been a sufficient illustration of this truth. Some departure, therefore, in the recommendations of Congress, from the Federal Constitution, was unavoidable; but it will be found to be as small as could be reconciled with the object in view, and to be supported besides by solid considerations of interest and sound policy.

“The fund which first presented itself on this, as it did on a former occasion, was a tax on imports. The reasons which recommended this branch of revenue, have heretofore been stated in an Act, of which a copy, No. 2, is now forwarded, and need not be here repeated. It will suffice to recapitulate, that taxes on consumption are always least burdensome, because they are least felt, and are borne too, by those who are both willing and able to pay them; that, of all taxes on consumption, those on foreign commerce are most compatible with the genius and policy of free states; that from the relative positions of some of the more commercial states, it will be impossible to bring this essential resource into use without a concerted uniformity; that this uniformity cannot be concerted through any channel so properly as through Congress, nor for any purpose so aptly as for paying the debts of a revolution, from which an unbounded freedom has accrued to commerce.

“In renewing this proposition to the states; we have not been unmindful to the objections which heretofore frustrated the unanimous adoption of it. We have limited the duration of the revenue to the term of 25 years; and we have left to the states themselves the appointment of the officers who are to collect it. If the strict maxims of national credit alone were to be consulted, the revenue ought manifestly to be consistent with the object of it, and the collection placed in every respect under that authority which is to dispense the former, and is responsible for the latter. These relaxations will,

will, we trust, be regarded on one hand as the effect of a disposition in Congress to attend at all times to the sentiments of those whom they serve, and on the other hand, as a proof of their anxious desire that provision may be made in some way or other for an honorable and just fulfilment of the engagements which they have formed.

“ To render this fund as productive as possible, and at the same time to narrow the room for collusions and frauds, it has been judged an improvement of the plan, to recommend a liberal duty on such articles as are most susceptible of a tax according to their quantity, and are of most equal and general consumption; leaving all other articles, as heretofore proposed, to be taxed according to their value.

“ The amount of this fund is computed to be 915,956 dollars. The estimates on which the computation is made, are detailed in paper No. 3. Accuracy in the first essay on so complex and fluctuating a subject is not to be expected. It is presumed to be as near the truth as the defect of proper materials would admit.

“ The residue of the computed interest is 1,500,000 dollars, and is referred to the states to be provided for by such funds as they may judge most convenient. Here again the strict maxims of public credit gave way to the desire of Congress to conform to the sentiments of their constituents. It ought not to be omitted, however, with respect to this portion of the revenue, that the mode in which it is to be supplied, varies so little from that pointed out in the articles of Confederation, and the variations are so conducive to the great object proposed, that a ready and unqualified compliance on the part of the states may be the more justly expected. In fixing the quotas of this sum, Congress, as may be well imagined, were guided by very imperfect lights, and some inequalities may consequently have ensued. These, however, can be but temporary, and as far as they may exist at all, will be redressed by a retrospect-

ive adjustment, as soon as a constitutional rule can be applied.

“ The necessity of making the two foregoing provisions one indivisible and irrevocable act, is apparent. Without the first quality, partial provision only might be made where complete provision is essential; nay, as some states might prefer and adopt one of the funds only, and the other states the other fund only, it might happen that no provision at all would be made: without the second a single state out of the thirteen might at any time involve the nation in bankruptcy, the mere practicability of which would be a fatal bar to the establishment of national credit. Instead of enlarging on these topics, two observations are submitted to the justice and wisdom of the Legislatures. First: The present creditors, or rather the domestic part of them, having either made their loans for a period which has expired, or having become creditors in the first instance involuntarily, are entitled on the clear principles of justice and good faith, to demand the principle of their credits, instead of accepting the annual interest. It is necessary, therefore, as the principal cannot be paid to them on demand, that the interest should be so effectually and satisfactorily secured, as to enable them if they incline, to transfer their stock at its full value. Secondly; if the funds be so firmly constituted as to inspire a thorough and universal confidence, may it not be hoped, that the capital of the domestic debt, which bears the high interest of six per cent. may be cancelled by other loans obtained at a more moderate interest? The saving by such an operation, would be a clear one, and might be a considerable one. As a proof of the necessity of substantial funds for the support of our credit abroad, we refer to paper No. 4.

“ Thus much for the interest of the national debt: for the discharge of the principal within the term limited, we rely on the natural increase of the revenue from commerce, on requisitions to be made from time to time for that purpose, as circumstances may dictate, and

and on the prospect of vacant territory. If these resources should prove inadequate, it will be necessary, at the expiration of twenty-five years, to continue the funds now recommended, or to establish such others as may then be found more convenient.

“ With a view to the resource last mentioned, as well as to obviate disagreeable controversies and confusions, Congress have included in their present recommendations, a renewal of those of the 6th day of September, and of the 10th day of October, 1780. In both those respects, a liberal and final accommodation of all interfering claims of vacant territory, is an object which cannot be pressed with too much solicitude.

“ The last object recommended is, a constitutional change of the rule by which a partition of the common burdens is to be made. The expediency and even necessity of such a change, has been sufficiently enforced by the local injustice and discontents which have proceeded from valuations of the soil in every state where the experiment has been made. But how infinitely must these evils be increased, on a comparison of such valuations among the states themselves ! On whatever side indeed this rule be surveyed, the execution of it must be attended with the most serious difficulties. If the valuations be referred to the authorities of the several states, a general satisfaction is not to be hoped for : If they be executed by officers of the United States traversing the country for that purpose, besides the inequalities against which this mode would be no security, the expence would be both enormous and obnoxious : If the mode taken in the Act of the 17th day of February last, which was deemed on the whole least objectionable, be adhered to, still the insufficiency of the data to the purpose to which they are to be applied, must greatly impair, if not utterly destroy all confidence in the accuracy of the result ; not to mention that as far as the result can be at all a just one, it will be indebted for the advantage to the principle on which the rule proposed to be substituted is founded. This rule, although

although not free from objections, is liable to fewer than any other that could be devised. The only material difficulty which attended it in the deliberations of Congress, was to fix the proper difference between the labour and industry of free inhabitants, and of all other inhabitants. The ratio ultimately agreed on was the effect of mutual concessions; and if it should be supposed not to correspond precisely with the fact, no doubt ought to be entertained that an equal spirit of accommodation among the several Legislatures, will prevail against little inequalities which may be calculated on one side or on the other. But notwithstanding the confidence of Congress, as to the success of this proposition, it is their duty to recollect that the event may possibly disappoint them, and to request that measures may still be pursued for obtaining and transmitting the information called for in the Act of the 17th of February last, which in such event will be essential.

“The plan thus communicated and explained by Congress must now receive its fate from their constituents. All the objects comprised in it are conceived to be of great importance to the happiness of this confederated republic, are necessary to render the fruits of the revolution a full reward for the blood, the toils, the cares and the calamities which have purchased it. But the object of which the necessity will be peculiarly felt, and which it is peculiarly the duty of Congress to inculcate, is the provision recommended for the national debt. Although this debt is greater than could have been wished, it is still less on the whole than could have been expected, and when referred to the cause in which it has been incurred, and compared with the burdens which wars of ambition and of vain glory have entailed on other nations, ought to be borne not only with cheerfulness but with pride. But the magnitude of the debt makes no part of the question. It is sufficient that the debt has been fairly contracted and that justice and good faith demand that it should be fully discharged. Congress had no option but between different

ferent modes of discharging it. The same option is the only one that can exist with the states. The mode which has after a long and elaborate discussion, been preferred, is, we are persuaded, the least objectionable of any that would have been equal to the purpose. Under this persuasion, we call upon the justice and plighted faith of the several states to give it its proper effect, to reflect on the consequences of rejecting it, and to remember that Congress will not be answerable for them.

“ If other motives than that of justice could be requisite on this occasion, no nation could ever feel stronger; for to whom are the debts to be paid ?

TO AN ALLY, in the first place, who to the exertion of his arms in support of our cause, has added the succours of his treasure; who, to his important loans, has added liberal donations; and whose loans themselves carry the impression of his magnanimity and friendship. For more exact information on this point we refer to paper No. 5.

“ To *individuals in a foreign country*, in the next place, who were the first to give so precious a token of their confidence in our justice, and of their friendship for our cause, and who are members of a republic which was second in espousing our rank among nations. For the claims and expectations of this class of creditors we refer to paper No. 6.

“ Another class of creditors is, *that illustrious and patriotic band of fellow-citizens*, whose blood and whose bravery, have defended the liberties of their country, who have patiently borne, among other distresses, the privation of their stipends, whilst the distresses of their country disabled it from bestowing them; and who, even now, ask for no more than such a portion of their dues as will enable them to retire from the field of victory and glory into the bosom of peace and private citizenship, and for such effectual security for the residue of their claims, as their country is now unquestionably able to provide. For a full view of their
sentiments

sentiments and wishes on this subject, we transmit the paper No. 7 ; and as a fresh and lively instance of their superiority to every species of seduction from the paths of virtue and honour, we add the paper No. 8.

“ The remaining class of creditors is composed partly of such of our fellow-citizens as originally lent to the public the use of their funds, or have since manifested most confidence in their country, by receiving transfers from the lenders ; and partly of those whose property has been either advanced or assumed for the public service. To *discriminate* the merits of these several descriptions of creditors, would be a task equally unnecessary and invidious. If the voice of humanity plead more loudly in favour of some than of others, the voice of policy, no less than of justice, pleads in favour of all. A wise nation will never permit those who relieve the wants of their country, or who rely most on its faith, its firmness and its resources, when either of them is distrusted, to suffer by the event.

“ Let it be remembered, finally, that it has ever been the pride and boast of *America*, that the rights for which she contended, were the rights of human nature. By the blessing of the author of these rights, on the means exerted for their defence, they have prevailed against all opposition, and form the basis of thirteen independent states. No instance has heretofore occurred, nor can any instance be expected hereafter to occur, in which the unadulterated forms of republican government can pretend to so fair an opportunity of justifying themselves by their fruits. In this view the citizens of the United States are responsible for the greatest trust ever confided to a political society. If justice, good faith, honour, gratitude and all the other qualities which enoble the character of a nation, and fulfil the ends of government, be the fruits of our establishments, the cause of liberty will acquire a dignity and lustre which it has never yet enjoyed ; and an example will be set which cannot but have the most favourable influence on the rights of mankind. If on
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the other side, our governments should be unfortunately blotted with the reverse of these cardinal and essential virtues, the great cause which we have engaged to vindicate, will be dishonoured and betrayed; the last and fairest experiment in favour of the rights of human nature will be turned against them, and their patrons and friends exposed to be insulted and silenced by the votaries of tyranny and usurpation.

“By order of the United States in Congress assembled.”

These important truths were listened to by *Pennsylvania*; and, like the sacred voice from on high, they commanded her respect.

Pennsylvania at all times hitherto attentive to her federal duties, except when the tardiness of other states, or the sufferings of her own citizens, led her into weaknesses in some degree perhaps excusable from her motives, though far from being justifiable, passed a law which after reciting the requisitions already read, authorised Congress for the term of 25 years, to levy for the use of the United States on the enumerated articles mentioned in that requisition, the particular duties which it called for, and also upon all other goods a duty of 5 per cent. *ad valorem*. The same Act, after reciting that Congress had by their Act of the 18th of April 1783, resolved that it be further recommended to the several states to establish for a term limited to twenty-five years, and to appropriate to the discharge of the interest and principal of the debts contracted on the faith of the United States for supporting the war, substantial and effectual revenues, of such nature as they may judge most convenient, for supplying their respective proportions of one million five hundred thousand dollars, annually, exclusive of the above-mentioned duties to be fixed according to the articles of Confederation: Provided, that until they should be so fixed, the proportion of *Pennsylvania* should be two hundred and five thousand one hundred and eighty-nine

nine dollars; DECLARED AND ENACTED, that the said proportion of one million five hundred thousand dollars, annually, for the term of twenty-five years, should be raised and levied on the persons and estates of the inhabitants of this state, for the uses and purposes aforesaid; and the same Act explicitly declared, “That the money to be raised by virtue of it, *should be and it thereby was appropriated to the discharge of the interest and principal of the debts contracted on the faith of the United States for supporting the war;*” with a proviso, nevertheless, that *that* Act should not take effect until each of the United States should make laws conformable to the Acts of Congress on which that Act was founded.

Although it is admitted, Mr. Speaker, that this Act was not to operate as a law until similar ones, at least in principle, should be enacted by all the other states; yet nothing can, I apprehend, be more clear than that as the object of it was to provide for the quota of *Pennsylvania* for the term of twenty-five years, and as it contained a conditional grant, of it for that period, *that* grant could not, even independent of the articles of Confederation, be withdrawn within that time, since it contained no such provision, and the whole of that time was allowed for other states to pass similar laws—On this head I shall have occasion by and by to remark more fully, and therefore I will forbear doing it at present.

The next material step taken by the Legislature of *Pennsylvania*, and connected with the object of our present enquiries, was, the passing of a law on the 16th of March 1785. This law formed the revenues of the state into an aggregate fund for several purposes, and among others for that of paying the state’s estimated quota of the annual interest of the debt of the United States contracted during the late war, and supposed to amount to £. 123,932. But such payment was not to be made into the Treasury of the U. S. for the benefit of all the creditors of the United States,
but

but it was specially provided, that the said estimated quota should be for the sole and exclusive benefit of such creditors of the United States as were citizens of this state—These payments were directed to be made through the medium of the Continental Loan-officer; he was ordered to keep fair and proper accounts thereof, in order that this state might have proper credit therefor in account with the United States; and the Act was to continue in force until the United States should make and carry into execution other effectual and permanent provision for paying the annual interest and arrearages of interest due on the debt of the United States to the public creditors thereof.

No comment can be at present necessary upon this Act; it speaks for itself, and its language is that of perfidy—It was so considered by Congress, and on the 27th of September following they took measures which completely defeated its operation—on that day it was “resolved that the commissioner of the Continental Loan-office in any state, should not on any pretence whatever settle or issue any certificate for the interest due on any Continental Loan-office certificate, or other certificate of liquidated debts, unless as hereafter provided, until the state for which he is Continental Loan-officer, should have passed a legislative Act complying with this requisition, (to wit, a requisition from the several states of their respective quotas) nor shall he issue any certificate or take any other measure whereby the interest may be paid by the state in any mode not pointed out by this requisition; nor shall the Commissioner of the Continental Loan-office in any state, that shall have complied with this requisition, issue any certificate or take any other measure, whereby a discrimination may be made by such state between the holders of Loan-office certificates issued from his office, who are citizens of that state, and foreigners or the citizens of any other state that shall have complied with this requisition”—And Congress on the same day, further resolved that if any such commissioner should disobey or

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neglect to carry into execution any resolution or order of Congress, the board of treasury should suspend him from his office and appoint another in his room.

The clamours of the public creditors at home and abroad, who had been excluded from their just rights by discriminating Acts of legislation, in favour of a particular class of creditors, loudly demanded from Congress this firm tone of conduct, and by adopting it, they shewed their abhorrence of principles to which I will not give a name.

What I have hitherto dwelt upon, Mr. Speaker, may be considered but as the follies of *Pennsylvania*, when compared with that which is to follow. When she found herself baffled, and her system of discrimination defeated by Congress, she in the fatal moment of some unpropitious influence, adopted the bold and desperate measure of enacting the law to which I shall now turn—It could not be erased from her records in the year 1789, and there was no way of removing the disgrace which it had brought with it, but by repealing its obnoxious and baneful parts—It was passed on the 1st of March 1786—and by it *Pennsylvania* assumed upon herself payment of the whole of the debt due to her own citizens from the United States for monies loaned, supplies furnished or services performed during the late war; she provided for the payment of the interest thereof half yearly, until the first day of March 1796, and then for the payment of the principal; she mortgaged for securing the payment of the interest the aggregate fund provided by the Act of the 16th of March 1785; and that aggregate fund was made up in part of the very fund which she had before vested in the United States for the payment of her quota to all the creditors of the Union.

This Act was unconditional and it was without limitation as to time—It therefore merits a very different consideration from any of the former Acts, nor do I conceive any tolerable apology which can be fairly made

made for the framers of it—That part of it indeed which contained the assumption, I am not disposed to find fault with, and if I was, perhaps my objections would appear groundless; but that part of it which mortgaged the quota of this state for payment to her own citizens only, is perhaps unexampled by legislative acts even in the worst of times.

In the year 1788 the Constitution of the United States was adopted and ratified—It provides that “The Congress shall have power to lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defence and general welfare of the U. S.

“That no state shall without the consent of Congress lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the Treasury of the United States.”

“That no state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.”

“That all debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation; and it concludes with declaring that

“This Constitution and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land.”

On the 27th of March 1789 the Legislature of *Pennsylvania* passed a law, which after some recitals, unnecessary to be read at present, though they may be proper to be observed upon by and by, enacted that “the interest due and to become due and payable upon all and every the certificates issued by the Comptroller-General in pursuance of the said recited Acts or either of them, shall be paid up, so as to complete the payment of interest to four years; and that so much of every Act or Acts of General Assembly, as directs or
secures

secures the payment of the principal sum or sums in the said certificates or any of them mentioned, or of the interest thereof, beyond the term of four years, shall be, and the same is hereby repealed, and made null and void."

The first position, Mr. Speaker, which I have proposed maintaining is, *That the New-Loan certificates were subscribable to the loan of the United States; and of course, were redeemable at the Treasury of Pennsylvania;*" and I have in an early stage of my remarks ventured to state as the ground of this position, that "the Act of the 27th of March 1789 was so far from abolishing the New-Loan debt created by the Act of the 1st of March 1786, as to leave it as it was before, with this difference only, that it was funded by the law of 1786, and unfunded by that of 1789, and left without the means of payment, until some new provision should be made for that purpose; and I at the same time added, that it was the meaning and duty of the Assembly in March 1789 to repeal so much of the Act of 1786 as provided the means of payment; as was originally founded on a breach of faith, and as was beyond the power of the Legislature to enact; but I denied that the Legislature of 1789 had either the power or the will to repeal that part of the Act which assumed the debt.

Most of the materials necessary to a decision of these questions are now before the honorable Senate. As I proceed in my argument I shall occasionally have recourse to the rest of them.

The ground which I have hitherto taken is intended to shew, that the New-Loan debt as it is called, created by the Act of 1786, continued to exist notwithstanding the law of 1789—If it did not continue to exist, I must admit that the New-Loan certificates were not subscribable to the loan of the United States; and if it did continue to exist, it follows as a necessary consequence that they were subscribable—The establishing of the point is therefore of so much importance to the defendant as to afford a sufficient apology for my endeavouring

deavouring to draw the attention of the honorable Senate to a short review of the ground over which I have passed.

It has been shewn, that all debts due to foreign and domestic creditors of every description, for monies loaned, supplies furnished and services performed for the general defence during the late war, were contracted on the faith of the whole Union, and of course that each of these creditors whether foreign or domestic, and whether consisting of a nation or of a private individual, has both an equitable and a legal claim on all the states for payment—It may have sometimes happened, that nations in all the pride of power and imaginary omnipotence, have been so regardless of character and of the sacred voice of justice, as to substitute *that* power as the only measure of right, and by adopting a conduct which in the humble walks of private life, would consign an individual to deserved disgrace and infamy, have undertaken to cancel their engagements. Admitting for a moment, that *Pennsylvania* was willing to appear as a prostitute among nations, yet she had no authority to legislate for foreign nations or foreign citizens, and of course she could not annul her obligations with them—Again, *Pennsylvania* was but an integral part of the United States, and she could have no pretensions to the right of annulling their contracts or extricating herself from their binding obligations on her.

It has been shewn, that the articles of Confederation were proposed to, and ratified by all the states; that every state thereby bound herself to abide by the determinations of the United States in Congress assembled, on all questions thereby submitted to them; that each state by a solemn compact declared that they should be inviolably observed by every state, and that no alteration should at any time be made in any of them, unless it should be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every state; that all the charges of war
and

and other expences incurred for the common defence or general welfare, should be defrayed out of a common Treasury supplied by the several states in such proportion as should be fixed by Congress, and that for the payment and satisfaction thereof the United States and the public faith were thereby pledged; that the quota of *Pennsylvania* was fixed in the manner prescribed by the articles of Confederation, and that therefore, unless a part is greater than the whole; unless the power of *Pennsylvania* singly, is greater than that of all the states collectively; unless she had a right to legislate for foreign citizens and foreign nations, and unless she could at pleasure withdraw her faith and cancel her engagements, her quota could not be applied by her in favour of one class of creditors, and to the exclusion of others.

It has been shewn that *Pennsylvania* by her law of 1783 granted her quota, which had been fixed and called for by Congress for the payment of the interest due to the public creditors until provision should be made for the discharge of the principal, and that by this additional ratification of her former obligations she became doubly bound to a faithful compliance with them.

It has been shewn that *Pennsylvania* by another Act of the 23d of September 1783 authorised Congress, when the other states should come into the same measure, for the term of 25 years to levy certain duties; and that she herself provided for raising certain taxes; at the same time, and in the most explicit manner she appropriated them to the discharge of the interest and principal of the debts contracted on the faith of the United States for supporting the war.

After all these engagements, surely no rational man will seriously contend, that the quota of *Pennsylvania* was not irrevocably mortgaged to all the public creditors, or that *Pennsylvania* had the power of lessening the claims of any of them upon her for retribution—The Constitution of the United States is the supreme law of the land; it declares that “all debts contracted
and

and engagements entered into before its adoption, shall be as valid against the United States as they were under the Confederation; the sovereign people of *Pennsylvania* by adopting that Constitution, agreed that those debts should be so—Under the articles of Confederation *Pennsylvania* was bound and her quota was mortgaged for their payment; by her Act of March 1786 she undertook to say, that the debts contracted and engagements entered into should not be as valid against her as by the articles of Confederation they had been declared to be, and that her quota should no longer be liable for the payment of them.

In what situation then did *Pennsylvania* find herself in the year 1789? She found among her records an Act stamped with the name of a law, but part of it disfigured by features which shewed that it rather merited the name of an arbitrary and despotic edict—*That* part she considered as a monument of her disgrace, and she determined to repeal it, and by doing so to restore her credit and the rights of all the creditors of the Union; but she saw another part of it, which infringed the rights of no one; interfered with no former engagements, that she had an unquestionable right to enact it; that she had enacted it; that she had thereby pledged her faith where she had a right to pledge it, and that it could not be repealed without a breach of that faith; that part therefore she determined not to touch, and with the delicate hand of a skilful surgeon, she probed the wound; she separated the rotten from the sound, and she repealed so much of the Act of 1786 as funded the New-Loan debt on her quota, in favour of her own citizens only, when it belonged not to them alone but to them in common with every other class of creditors; but so much of the same Act as assumed, without funding the New-Loan debt she could not without a manifest breach of faith repeal, and she therefore left it as it was.

I have said, Mr. Speaker, that she had neither the power nor the will to repeal this part of the Act.

That

That she had not the power, will, I think, evidently appear from a consideration of the constitution of the United States—"NO STATE SHALL PASS ANY EX POST FACTO LAW, OR LAW IMPAIRING THE OBLIGATION OF CONTRACTS."

By the law of 1786, *Pennsylvania* proposed to receive from such of the creditors of the United States as were her own citizens, their Continental certificates, and to give them her own certificates in lieu thereof; she proposed this but she did not command it; she offered that it might be done, but she did not enact that it should be done; she therefore appeared in the character of a person willing to contract with such persons as might accept of her terms—many persons did accept of them; she received their Continental certificates; she issued new ones in lieu thereof, and through the agency of her Comptroller-General made as full and complete a contract, as can be expressed in any form of words.

We have been told indeed that it was "*a loan and not a contract*;" that it was "*a proposal and not a bargain*;" that it was "*a receipt for the old certificate to be returned at her pleasure, and not an obligation to pay the new one.*" But we have not been told, *how there can be a loan without a contract!* nor how a proposal *when agreed to and accepted*, can be any thing short of a bargain! nor by what rule of construction it is, that a certificate, signed by the proper officer, and expressed in the following words, to wit, "The commonwealth of *Pennsylvania* hath received on loan from the sum of to be paid to the said or bearer, on or before the first day of March, 1796, with interest from the day of at the rate of 6 per cent. per annum, to be paid half yearly at the State Treasury, according to the direction of an Act of General Assembly passed on the day of ," is to be considered only as a *receipt* for the old certificate, to be *returned* at the pleasure of the commonwealth, and not an *obligation* to pay the new one; more especially when it is considered, that by the Act for issuing the certificates, the interest is payable

able half yearly, and the certificates are receivable at the land-office to *the whole amount of the principal*!

It has also been said, Mr. Speaker by the honorable managers and the learned counsel, that “The clause in the Constitution of the United States, prohibiting the passing of *ex post facto* laws, and laws annulling the obligation of contracts, does not relate to states, but to private persons only.” But before I shall attempt a *serious* answer to this *serious* objection, I must wait to be informed by some of those Gentlemen how “*private persons*” can pass a law of any kind!

Again, it has been said that “The clause in question does not extend to the conduct of a state towards her own citizens, but that it leaves her to act with respect to them, as she may think proper.”—To this I answer,

1st. That the clause in question, contains no such exception, and that I am far from being satisfied of the gentlemen’s right to add it to the Constitution.

2d. That foreign citizens and foreign states are interested, and that therefore, if the proposition were true, yet that the conclusion would be unwarrantable.

3d. That the reason is much stronger, for the clause applying to the conduct of a state towards her own citizens, than towards any body else; since she has no right to legislate, but for her own citizens, and the clause could not therefore be necessary to preserve the rights of other citizens or foreign nations.

We are also told that “The clause referred to, only relates to contracts, and not to laws,” but before I can possibly give any other answer to this objection, than by laughing at it, I must be informed how it is possible that these words, “NO STATE SHALL PASS ANY EX POST FACTO LAW, OR LAW IMPAIRING THE OBLIGATION OF CONTRACTS,” do not relate to laws, but only to contracts.

Again, supposing the proposition to be true; I ask if it has not been incontestably proved, that a state is as capable of making a contract as a private individual

can possibly be? If *Pennsylvania* had not made contracts? If they were not as binding on her, as they could be on an individual? and if so, need I to add, that she could pass no *ex post facto* law, or law impairing the obligation of contracts, more especially in *her own case; in her own favor, and to the prejudice of her own creditors!*

Hence I conclude, that the Legislature of 1789 had not the power, even had it been so weak or so wicked as to have the will, of repealing that part of the Act of 1786 which assumed so much of the debt of the United States as was due to the citizens of *Pennsylvania*. Independent of the unconstitutionality of such a measure, it would have been so extremely unjust, that the intention is not fairly imputable, without much stronger proofs, than are furnished by the language of the law of that date.

We have, it is true, been told that “Considering the proceedings which took place under the law of 1786 as but merely an *exchange* of one certificate for another, a *re-exchange* might with great propriety be ordered by a subsequent law, since this would only be putting matters as they were before, and leaving them in *statu quo*, so that no harm could possibly be done”—But surely this kind of reasoning is altogether inadmissible, and without even the merit of plausibility—In the year 1786 the United States, with the best of wishes towards their creditors, were, owing to the delinquency of some of the states; without the means of rendering them justice—This was so well known as in a great measure to destroy all confidence in them, and a state security was by most people deemed preferable to a continental one. *Pennsylvania* therefore by assuming so much of the debt as was due to her own citizens, added confidence to them, enhanced the value of their claims, and stamped them with a currency which they had not before—This brought them into circulation, and they were in hundreds, perhaps in thousands of instances, purchased for valuable considerations upon the faith of the State, and
which

which would not have been given upon the faith of the United States—To destroy the new certificates therefore in the hands of such *bona fide* purchasers as might chuse to retain them in preference to giving them up for the old ones, would not have been “putting matters as they were before, and leaving them in *statu quo*,” but would have been the extreme of injustice and of despotism—It would have been an undertaking to judge, where *Pennsylvania* alone had no right to judge, nor to act, but with the concurrence of those who held her certificates—upon *them* it was hard enough that the funds provided for payment by the law of 1786 should be taken away by that of 1789, but as they had known, or had the means of knowing when they received the certificates, that these funds were not at the disposal of *Pennsylvania*, but were the property of others, they acted with their eyes open; they took upon themselves the risque of her restoring them in her more virtuous days to the true owners, and when she did so, they had no cause to complain. Not so would have been the case, had she undertaken to destroy the debt—The debt due from the United States was either not funded at all, or it was funded on the quotas of the several states.—In the former situation, were the New-Loan creditors placed by the law of 1789, with the liberty, if they thought proper of being placed in the latter, by exchanging their new certificates for the old ones. This far it was the duty of *Pennsylvania* to go, but she could not have gone farther without a violation of that duty, and it will presently appear that she had no such intention.

It can hardly be necessary to again remind the honorable Senate of the Act of the 23d of September 1783, whereby *Pennsylvania*, by a full and complete grant, authorised Congress to raise and levy the whole of her quota of the debt of the United States, to take effect as soon as the like powers should be given by all the other states. By the Constitution of the United States, the like powers were delegated to Congress by all the states,
and

and therefore by its adoption this grant became absolute and irrevocable. In proof of this, I must again have recourse to the following clause, "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States."

As this clause transfers to Congress the identical duties upon which the New-Loan debt had been funded, it may with more propriety be said, that it became unfunded by the adoption of the Constitution in 1788, than by the law of 1789, since that law only renders the one of 1786 conformable to it.

That my idea of the New-Loan debt continuing as a debt of *Pennsylvania*, though it should become unfunded is not a novel one, I will now afford the most irrefragable proof, and my authority shall be no less than that of *the same Legislature which by the Act of 1786 created that debt.*

It must be fresh in the memory of every man who hears me, that when the delinquency of some of the states in their federal duties, had arisen to such a height, as to almost menace a dissolution of the Union, Congress stood firm at their post, and exerted every nerve to preserve, or rather to rescue the tainted honour of the country—On one of these trying occasions, they sent a committee consisting of Mr. King and Mr. Monroe to confer with the Legislature of *Pennsylvania*. This event took place in the year 1786, and the Journals of the Assembly of that year shew what took place on that occasion.

(Mr. Lewis then read the report, which see page 319, 320.)

By this it appears that a report was made by a committee of the same House of Assembly that passed the law of 1786; it was adopted by the next succeeding House, composed of nearly the same members, and it recognizes several of the principles which I have advanced—"It considers the debt of the U. S. in one aggregate point
of

of view"—It states that the "principles of justice require, like payment of every part, whether the same be due to foreigners or citizens"—It appears that the *Legislature of 1786*, as well as that of 1787, thought that a "compliance with the requisition would involve a breach of the faith of this state pledged to her own citizens, UNLESS AT THE SAME TIME SOME FURTHER AND OTHER FUNDS WERE PROVIDED FOR THE PAYMENT OF THE INTEREST DUE AND WHICH SHOULD BECOME DUE TO THEM"—And this surely implies that when *such other funds were provided, it would be no breach of faith to take away those which had been subscribed*—This clearly separates the assumption of the debt from the funding of it—By the Constitution of the United States, ample means of other funds were provided, and therefore the Legislature of 1789 distinguished, as those of 1786 and 1787 had done, *between the assumption of the debt and the funding of it*; and as *they* had proposed, permitted the *former to remain*, but took away the latter.

This report states the necessity which the State had been under of "assuming the debt," and it speaks of the assumption as being unconditional in its nature, and unlimited in point of time; but it assumes a very different language when speaking of the funding of the debt, for the expression there is, that "This House cannot divert the funds until such solid provision be made for all the public debts, as that the annual interest payable to *Pennsylvania*, will be a certain and sufficient fund for discharging those sums, which she is bound to pay to her citizens"—By the Constitution of the United States such "solid provision" as is here spoken of was amply secured, and therefore the law of 1789 is in this particular conformable to what the Legislature in 1786 considered as proper under the like circumstances.

To determine however, whether there is any thing in the letter or spirit of the Act of 1789, shewing an intention to destroy the New-Loan debt, a nearer view of the subject must be taken. When the bill was before the House

House in its original shape, it proposed no more than to repeal so much of the law of 1786, as directed the payment of the interest half yearly, and had it retained this form it would hardly be contended that the debt itself was destroyed—The cause of the alteration may however be easily traced, and when that is known, there will appear no more reason for concluding the intention to have been to destroy the debt, than if no alteration had taken place. That cause was as follows—As the interest was funded upon and made payable out of the quota of *Pennsylvania*; and as it was proper to repeal this part of the Act, the Legislature at first proposed to do nothing more—It was however in the progress of the bill observed, that the principal was receivable at the Land-office, in order to form a charge against the United States, and to be deducted from the quota of *Pennsylvania*. Hence this part of the Act was also exceptional, and a very proper object for a repealing clause. These circumstances certainly afford strong grounds for the conclusion, that in 1789 nothing more was intended than to prevent any part of the quota of *Pennsylvania* from being applied to partial purposes, and to leave to her future consideration, what funds she would provide for the payment of these debts, or indeed whether she would provide for them at all.

We have been told, Sir, that “The long and laboured preamble to the law of 1789, shews the anxiety of the Legislature to afford a justification for what was about to be done, and that this proves a total destruction of the debt to have been intended.” But were I to admit, that it is not the *substance* but the *length* of the preamble, which affords a key for the interpretation of the enacting clause, yet a very strong conclusion might fairly be drawn in favour of my construction, since not one word is to be found in any part of the preamble, in favour of destroying the debt, while every sentence of it, is calculated to shew the propriety of rendering it an unfunded one.

The preamble says, "And whereas Congress having the power to provide for the payment of the debts of the United States, no doubt can be entertained but they will with all convenient speed make due provision for the same"—and this has been relied on to shew, that the intention was to destroy the New-Loan debt altogether, but to me it appears that a very different inference is deducible.

The preamble recites that "Congress have power to lay and collect taxes, duties, imposts and excises; to pay the debts of the United States; that no state can without the consent of Congress lay any imposts or duties on imports or exports, and as that part of the aggregate fund created by the Act of March the 16th 1785 which arises from the duties and imposts therein mentioned, will shortly cease to come into the Treasury of this state, it is reasonable and just that the temporary relief which by the said recited Acts was granted, &c. should also cease."

In these recitals we discover no intention to annul the debt, but we see very strong ones for withdrawing the funds and providing no others at that time; Congress had the power, and therefore, there could be no doubt of their having the will;—the proper funds were withdrawn from the state and vested in Congress;—the quota of *Pennsylvania* was restored to the proper channel, and therefore the plain language of this preamble is, that as we are under no obligation to provide other funds, we will not do it at present, but we will give you an opportunity of receiving back your old certificates, in order to apply to your original debtor for payment before you shall look to us who are but the guarantee.

Again, the preamble after reciting the law of 1786 and some former ones, says "It is reasonable and just that the *alterations* of the said recited laws herein after mentioned, should be made." Can any thing shew more clearly than this, that they were to be *altered*, not *destroyed*; *amended*, not *repealed*? and if so, that part was to remain

remain, and *that* part is so much thereof as was assumed debt.

But further says the preamble; "It is reasonable and just that the *temporary* relief granted by the said recited Acts should cease." Let us see, Mr. Speaker, what this temporary relief was, and when we know this we shall have the Legislature's own declaration of what was deemed reasonable and just to do—The principal was made payable at the end of ten years, but it was not secured on any grounds; this was hard upon the creditors, who had long sought in vain for their just rights—The finances of *Pennsylvania* did not admit of her promising payment of the principal at an earlier period, nor of fixing on any funds even for that time;—but in consideration of their distresses, she granted them *temporary relief*, and that temporary relief was,

1st. The payment of the interest half yearly during ten years but no longer; and,

2d. As she wished to dispose of her back lands, and found much difficulty in doing it, she agreed to receive New-Loan certificates at the Land-office in payment for her back lands.

And she provided that both of these should be charged against the United States and be deducted from her quota—We now see what this *temporary relief* was, which it *was reasonable and just should cease*; we find that it had no relation to the validity of the certificate; that it was confined to payments out of the quota of *Pennsylvania*; and after this, the construction must be a very strained one indeed, which supposes that the Legislature thought it reasonable and just that the certificates *should be cancelled and the debt abolished*!—Had such been the intention, would not the preamble have said so? Or could such be the intention, when the language is so very different?—To *cease*, and to *abolish*, are different things; in the one case the thing which ceased may begin again: in the other it is destroyed and gone forever.—But if this were not so, yet it is only the *temporary relief* which was to cease, and we have

we have seen what that temporary relief was. The words temporary relief, can with no kind of propriety be applied to a debt made payable *at the distance of ten years*, without any funds being provided for its discharge at that time, or means of compelling the Legislature to provide them at all. The words *future* relief might be applicable to such a case, but I have not a very clear idea of that kind of temporary relief which I must wait ten years for, and I therefore conclude that it was not intended to abolish the debt itself. The reason assigned for repealing certain parts of the Act of 1786, may be a good one, but it is no reason for a total silence respecting that part of the law of 1786, which assumed the debt, if a repeal of it was really intended.

I say a *total silence*, respecting the *assumption*, for I can find nothing at all respecting it, in the clause in question.—Let us, Mr. Speaker, pay a little more minute attention, to these *all-powerful* words,—“So much of every Act, &c. as *directs or secures* the *payment of the principal sum or of the interest*, beyond the term of four years, shall be, and the same is hereby repealed, and made null and void.”

Unless these words destroy the debt, it is not pretended, that there is any thing in the Act of 1789 which can have that effect.—The words “so much as *directs the payment of the principal or interest*,” can with no kind of propriety be said to have the least operation in the way contended.—*Pennsylvania* by her Act of 1786 *directed* her proper officer, to pay the interest half yearly, until the end of the ten years, out of her quota of the debt of the United States; she also directed her proper officer to pay the principal out of the same quota at her Land-office, to such persons as might be willing to accept of payment in that way; but she *directed* no other payment to be made, nor did she make any provision for it. In 1789 she *directed* that these payments should cease, and she did this with great propriety, because these payments in the manner *directed*, and out of a fund not *at her disposal*, were at

all times so improper, that no Act of hers could render them legal.

It is therefore clear that this part of the clause, does not afford even the semblance of reason, for the strange supposition that the law of 1789 meant to *destroy* the debt, or to do any thing more than to *unfund* it, because, if the expression be allowable, it had been *fund-ed*, on *funds*, which she had no right to *fund* it upon.

But it is said, that the Act of 1789, not only repealed so much of the Act of 1786, as *directed* payment, &c. but also so much of it as *secured* payment; and it is contended that whatever the construction may be of the former expression, that the latter will admit of nothing less than an absolute annihilation of the debt.

This seems, Sir, to be considered by our enemies as their strong ground, but I nevertheless believe that they may without difficulty be driven from it by regular approaches and fair argument, and I shall proceed in this way, with full confidence of success and of complete victory.

“SO MUCH AS SECURES PAYMENT”—What do these words imply? Why that so much of the Act of 1786 as provided the means or afforded security for payment should be repealed. But how far did it provide the means or afford security or give a pledge for payment? Why it gave and it pledged as security for payment of the interest for ten years, the quota of *Pennsylvania* of the debt of the United States—The repeal of this part of the law of 1786 which only related to the interest, has surely nothing to do with the destruction of the principal—But it may be said, that it also gave as a pledge or security for redeeming the principal, the right of paying the New-Loan certificates at the Land-office in exchange for vacant lands.—Admitting that the payment of the principal was in this manner not only *directed*, but *secured*, what is the consequence of a repeal of this provision of security? Why surely not an annihilation of the debt; or any thing more than a legislative declaration that however just, legal and lasting the

the debt may be, the payment of it shall not be *secured* in this particular way, because it was not in the power of the Legislature of 1786 to secure the payment out of her quota, and therefore so far as that Act secures the payment we repeal it because it secured payment from funds not belonging to or at the disposal of *Pennsylvania*.

Did the Act of 1786 secure payment in any other manner than has been mentioned? surely not—It must I think be admitted, that an assumption of a debt by a sovereign and independent state, without funding it, or providing any means for payment, does not secure its payment; since there is no office to apply to for payment;—no officer directed to make payment;—no funds provided from which payment is to be made;—no means of compelling the commonwealth to provide such funds; no process by which she is amenable to her own citizens; or in short any possible mode whereby the creditor can, independant of the will and pleasure of the state, be secure in his payment under such circumstances. If this is really the case, and I can perceive no room for doubting it, the conclusion necessarily follows, that the payment of the New-Loan debt was only secured by the law of 1786 on the quota of *Pennsylvania*, and that the withdrawing of that security did not destroy the debt, altho' it was left without the means of payment until some other means should be provided—Whether such means were afterwards provided or not, will be a question of subsequent enquiry.

If the payment of the principal and interest of the New-Loan debt was secured, *other than has been mentioned*, it must have been secured in *some particular way or manner*; for to say that a *thing is done*, but that it is *not done in any particular way or manner*; would be to talk a language which no rational man will do.—We very well know in *what way and in what manner*, the payment of the interest was secured; and we also know in *what way*, and in *what manner* the payment of the principal at the Land-Office was secured; but we know
of

of no other way or manner in which either of them was secured, and of *course they were not secured at all.*

It is contended indeed, that the issuing of the certificates, was securing the payment of them ; and we admit the truth of of the position so far as funds were provided and pledged for that purpose, but beyond this we say it is not tenable. There is surely a wide difference between *evidence* of a debt, and *security* for its payment, and the one may exist without the other. This doctrine may be well exemplified by cases which have been determined under the statutes of limitation. If I have a note of hand of so long standing, as that a recovery is barred by any of these statutes, it is evidence of my debt, but it does not secure the payment, because I can have no remedy to enforce a recovery. The debt is not however destroyed under these circumstances, but still exists, and if the debtor by his will provides a *fund* for the payment of his debts *generally*, and directs his executor to pay them out of that fund, without making any particular mention of such as are barred by length of time, I am now intitled to payment. Just so it is, I apprehend, with respect to certificates in the case put by our opponents. The certificate is evidence of the debt, and if it be a funded one, it is *security* for its payment ; otherwise not, until future means of payment are provided, because until then there is no possible mode of *compelling payment*, and without this, it is idle to talk, of, *the certificates securing payment !* — Just so was the case with respect to the *unfunded* depreciation certificates— It is admitted that they were evidences of a debt, altho' they did not *secure the payment* of that debt, for the reasons mentioned. Just so was the case too with respect to the old paper-money or bills of credit if they were not funded ; and just so it is with respect to all unfunded debts of every description. The debt exists and the certificate, &c. is evidence of it, but it does not secure its payment.

It has been relied on, Sir, as a conclusive and un-
answerable

answerable argument against the defendant, "That the Act of 1786 authorised the doing of but three things.

" 1st. The receiving the certificates of the United States upon loan.

" 2d. The issuing of State certificates in lieu of, or exchange for them; and,

" 3d. The payment of the New-Loan debt, or the sums mentioned in the State securities.

" And that as the first and second of these things had been done, there was nothing for the Act of 1789 to operate upon, but the destruction of the New-Loan debt, and therefore that its destruction must have been intended."

Whether this reasoning is ingenious or not, is not worth an enquiry, since if it is not *valid*, it cannot affect the defendant, and his counsel have no objection to yielding the palm of ingenuity to their learned friends but adversaries.

That it is not solid, and I wish to prove nothing else, will I think appear from the following observations—However true it may be, that the Act of 1786 directed but three things; yet it is equally true, that it directed and secured the last of them to be done in a way which it had no right to do, and therefore, the Act of 1789 with great propriety repealed so much of the Act of 1786 as directed or secured payment; since *that* direction and *that* security, were founded on a breach of faith, and were beyond the power of *Pennsylvania* to give.

Nor is it true, that in the year 1789 the Legislature had nothing to do, but to destroy the New-Loan debt altogether, or to permit its continuance, by suffering payment to be made in the manner, and out of the funds provided by the Act of 1786—In 1789 the following questions presented themselves to the Legislature:

1st. Shall the payments *directed* and *secured* by the Act of 1786, out of a fund which did not belong to
Pennsylvania

Pennsylvania to be continued, *out of that fund?* And the answer was; *no*.

2d. Shall such payments cease for the present, inasmuch as they can no longer be made out of that fund, which by her voluntary Act she is now deprived of? and the answer was *yes*.

3d. Shall so much of the debt as shall remain due in the year 1796 be now funded and provided for? and the answer was, that as Congress have the power and the means of payment, there can be no doubt of their compliance, and therefore, that *Pennsylvania*, deprived as she is, of the revenues arising from imposts, on imports and exports, will stop payment at present, and consider in future the propriety of its revival, or finally; Shall the debt be cancelled and destroyed?

This last; this bold and desperate; this scandalous and perfidious; this unconstitutional and impious measure, the Legislature of 1789, did not dare, nor was it so corrupt as to adopt—but it adopted a measure not only free from perfidy and impiety, but in strict conformity with its federal duties;—*that* of withdrawing the *stolen* funds provided for payment, and it carefully avoided the commission of a new breach of faith, by cancelling the assumption, at the very moment of atoning for a former one, by restoring the pilfered property.

Had the Legislature of 1789 contemplated the *imputed* nefarious design, its language would have been plain and explicit, and the abolition of the New-Loan debt, would (in case of a non re-exchange) have been declared in terms clear and unequivocal; unless indeed we are to suppose the Legislature of 1789, to have been no less corrupt than one branch of the present Legislature, seems to suppose the Legislature of 1786 to have been—but of this hereafter.

In order to prove, that a total destruction of the New-Loan debt was intended by the Act of 1789, and that this was within the power of the Legislature, it has been warmly urged, that the Act of 1786 was originally

ginally intended to be, of but short duration ; and to give colour to this doctrine, the words “ *temporary relief*,” which appear in the Act of 1789 have, without being understood, been perverted to answer this purpose. The gentlemen tell us that these words furnish a Legislative construction in their favor, and that this being the case, the honorable Senate have nothing to do but to abide by that construction ; a construction say they, which shews that *Pennsylvania* meant to reserve the right of *abolishing* the New-Loan debt at pleasure, and of *demanding* the new certificates in exchange for the old ones.

I am sorry, Mr. Speaker, to have occasion for observing, that while the Representatives of *Pennsylvania*, affect so much anxiety for her rights, as to give daily attendance here, they are so careless of her honor, as to remain *unmoved*, while that honor is so deeply wounded by their honorable managers and learned counsel ! Do these words appear in the law of 1786 ? They do not. Is not the construction of a law to be sought for in the law itself ? It certainly *is*. Would not this kind of reasoning authorise the passing of “ an *ex post facto* law, or law impairing the obligation of contracts on every occasion ? It certainly would, by declaring the former one, to have been intended but as a *temporary one* ! Does the law of 1786 contain a single word which can possibly lead to such a construction ? It does *not*. Does every certificate issued under that law, contain an absolute and unconditional promise for payment, at all events ? and does that law expressly direct that they shall contain such a promise ? These things *cannot be denied*. Are not all such certificates transferrable and made payable to bearer ? They *are*, If *Pennsylvania* meant to reserve the rights contended for under the *benign auspices* of the House of Representatives, was it honourable ? was it candid ? was it fair ? or to make use of more proper language ; if she had such *covert views*, was it not fraud ; perfidy ; baseness in the extreme ! to direct the issuing of certificates, which

on the face of them contained an absolute and unconditional promise for payment ? Let those who countenance such a construction answer these questions ! But the words “ *temporary relief*,” used in the Act of 1789 *only* relate, as has already been shewn, to the *temporary* payment of interest, and the *temporary* discharge of the principal and interest at the Land-office. This *temporary relief only*, was to cease ; no other temporary relief was afforded ; and therefore nothing can be more clear, than that every thing beyond this temporary relief was to continue.

But the gentlemen tell us “ That the Act of 1786 was but a substitute for the Act of 1785, and as one was temporary so was the other.”—This kind of logic may perhaps do very well in the House of Representatives, when Mr. *Nicholson* is the object, but it will not go down here—If it should prevail it will prove that no subsequent law can be of longer duration than a preceding one ! It will prove that the law of 1785, being a substitute for that of September 1783, could be of no longer continuance ! It will prove, that the law of Sept, 1783, being a substitute for that of March 1783, could be of no longer continuance ! and of course that the law of 1786 only granted one years interest ! The truth is, Mr. Speaker, that all new laws on the same subject, are intended to make different provision, of some kind or other from the former ones, and it generally happens, that the first law is limited to a short period, but that after experience has manifested its utility, the limitation is taken off, and it is, with the necessary alterations, made perpetual. On this principle we find that when *Pennsylvania* meant to afford temporary relief *only* ; she said so ; but that when she meant that her law should be *perpetual*, she did not think proper to *limit it*, as she had formerly done.

The same kind of logic, Sir, makes its appearance again, and we are next told, “ That as the public creditors had no more merit in the year 1786, than they had in the year 1785, there could be no reason for
granting

granting them greater relief in the last year, than in the former one, and that it may be therefore fairly concluded, that it was not intended."—To this it may be answered, that they had no more merit in the year 1786 than they had in the year 1783, and that therefore this argument, if it proves any thing at all, proves that the law of 1786 was only intended to make provision for one year's interest! If *all* Legislatures, at *all* times, thought *precisely alike*, on the same subject; and if the situation of the country, the finances of the State, and *all other* circumstances, were at *all times* the same, this argument might claim some attention; but as this is not the case, it would be but a waste of time to enter upon its serious refutation.

The truth is, that *Pennsylvania* only contemplated the payment of so much of the debt of the United States, as was due to her own citizens, but her finances did not admit of it; she therefore at first afforded temporary relief, and in the year 1786 made an absolute engagement; and that absolute engagement remained, although from the circumstances already mentioned, the holders of the certificates were deprived of the temporary relief provided for them.

(Here Mr. *Lewis* read several passages in the minutes of the Assembly of the 24th of December, 1784, page 97-8-9-100-1, in order to prove that *Pennsylvania* at that early period, contemplated the assumption of the debt due to her own citizens; and then proceeded as follows)—

We have also been told, Sir, that the Act of December 1780, making up the depreciation, did not require the old certificates to be given up, as the Act of 1786 did, and that therefore it was intended in 1786, that the old certificates should be delivered to the State, to be held until she might think proper to demand a re-exchange; but to this the answer is easy and must be satisfactory; that the Act of December 1780 did not assume the debt, but only provided for making up the depreciation, and of course, the certificates ought

to remain in the hands of the holders, and could with no propriety be asked for by the State.

Only one argument more, Mr. Speaker, connected with the present question, remains to be answered, and a most extraordinary one it is.

In February 1793, when the game had been started, and the House of Representatives were in full chase, they, if the manager's construction be right, provided themselves with an instrument of destruction, and a dreadful one it will be, unless we can disarm them of it. At that time they passed a law, proving as the managers say, that the New-Loan debt was abolished by the Act of 1789, and no longer existed as a debt due from *Pennsylvania*. This was long after all the transactions had taken place on which the impeachment is found; it was after they had commenced their enquiries and their charges; it was at a time when they were maturing them for his conviction; and this act of his accusers is now brought forward as a Legislative construction in order to insure his conviction! Had such an Act been passed by any other set of men than his accusers, and if such was their intention, it might have been imputed to the wantonness of power merely; but when it is considered that Mr. *Nicholson* could not know that such a law would pass; that it is sufficient for a man to square his actions according to the existing law; that this Act was passed by his accusers themselves; after the accusation had commenced, and is now relied on by them, in order to ensure his conviction, the *English* language affords not a name for such a proceeding.

The Roman history is a history of the *tyranny* of tyrants; of the *despotism* of despots; but it is some apology for them, that they were unacquainted with liberty, and that slavery appeared in a form less haggard from being familiar to them from the cradle. But in *Pennsylvania* law is a rule *prescribed*, commanding what is right, and prohibiting what is wrong; not only *prescribed* but *promulgated* and made known. *Caligula*

gula wrote his laws in small characters, and hung them on high pillars to ensnare his people, yet with trouble a knowledge of them might be obtained; not so with respect to an *ex post facto* law, interpreting that to be a crime, which at the time of the commission was innocent—against such weapons, prudence is no security; circumspection no safeguard; innocence no shield—The placing such a weapon therefore in the hands of the honorable managers and learned council, if intended for the purpose for which it has been used, can only be equalled by these champions of justice and of law, voting one of the articles of impeachment, upon *being told of what a person had said when not under oath!* When doubts arose upon the construction of the *Roman* laws, the case was stated to the emperor for his opinion, and his answers or rescripts had in *succeeding cases*, the force of laws—This, says Doctor *Blackstone*, was certainly a bad method. To interrogate, (says he) the Legislature to decide particular disputes, is not only endless but affords great room for *partiality and oppression*.

It was abolished by the Emperor *Macrinus*, but according to our opponents doctrine we now see it revived in *Pennsylvania*, even in a criminal case; after the accusation; and by the accusers!

If, Mr. Speaker, my principles are hitherto sound, it will I think follow as a necessary consequence, “*That the New-Loan certificates were subscribable to the loan of the United States, and of course were redeemable at the Treasury of Pennsylvania.*”

It is stated, I think, by one of the Managers, that the Act of Congress of the 8th of May, 1792, is but a continuation of that of the 4th of August, 1790, so far as relates to the present question, and that the construction of both must be the same—That of the 4th of August, 1790, enacts that “The sums which shall be subscribed to the loan, shall be payable in the principal and interest of the certificates, or notes, which prior to the 1st of January last, were issued by the respective

pective states, as acknowledgments or evidences of debts by them respectively owing, (except certain ones of the state of *North-Carolina*) with a proviso, that none such should be received, but such as had been issued for compensations and expenditures towards the prosecution of the late war."—What were the New-Loan certificates? Surely they were issued by *Pennsylvania* as evidences or acknowledgements of debts.

But, say the gentlemen, however true this may be, yet that they were not issued for compensations and expenditures towards the prosecution of the late war, but in lieu of other certificates.

What argument can be more fallacious than this? were they not issued for payment of such compensations in lieu of other certificates, on which payment could not be obtained? and do they not therefore come within both the letter and the spirit of the Act of Congress? The debts of the description already mentioned, were due from the *United States*; they were unable to pay them, and *Pennsylvania* said to her citizens; give us your certificates, that we may be reimbursed, and we will give you new ones for the payment of your compensations, and expenditures during the late war.—This was only a change of the security and of the person who was to pay; but the debt was the same; it was due to the same persons, and from the same cause, and the only alteration which took place was, that payment was to be made by *Pennsylvania*, instead of the *United States*. Does this alter the nature of the debt, or the cause from which it arose? surely not. Does one person becoming security for the debt of another, change the rise or origin of that debt? No man of common sense, will in the moments of serious reflection advance so wild a position.

If proofs in support of this reasoning are required, they are furnished by,

1st. The implied admission of the House of Representatives, and it is therefore reasonable to conclude, that we are beholden to the *ingenuity* of their *ingenious* managers,

managers, or perhaps still more *ingenious* counsel, for this *ingenious* objection.

2d. The opinion of the Secretary of the Treasury, expressed in his circular letter to the Commissioners of Loans throughout the U. S. (See p. 272-3) in the most clear, pointed and unequivocal terms, in our favour on this subject.—Great as that illustrious character is, I do not quote his opinion as any evidence of the law; but as it appears that Mr. *Nicholson* knew of this letter, and as criminality of intention, is essential to the commission of a crime, it is certainly material to consider, that he knew that he was acting conformably to the opinion of the distinguished head of an important department; who in addition to his *great law* abilities, seems to embrace a large portion of the circle of science, at a single glance, and as it were by intuition to penetrate, develope, comprehend, and to be able in a moment to elucidate every minute part of each of them.—If however opinion is to be resorted to; I ask of what weight can the opinion of the whole House of Representatives be, when weighed against that of Colonel *Hamilton*? *Alexander* the coppersmith, if compared with *Alexander* the great, would not form so striking a contrast.

And 3dly. Congress by their law of the 4th of August 1790, expressed themselves in such clear and pointed language in this particular, as must entirely obviate the objection and force conviction, even on the minds of infidels—In declaring what debts should be subscribable, they by the 13th sect. of that law enacted, that “The sums which should be subscribed to the said loan, should be payable in the principal and interest of the certificates or notes, which prior to the 1st day of January last, were issued by the respective states as acknowledgments or evidences of debts by them respectively owing, for compensations and expenditures, for services or supplies towards the prosecution of the late war, and the defence of the United States;” with an exception as to certain ones, issued by the state of *North-Carolina*;

Carolina; but, (17th and 18th sect.) as certain states had respectively issued their own certificates, in exchange for those of the United States, whereby it might happen that interest might be twice payable on the same sums; it was further enacted, that the payment of interest, whether to states or to individuals, in respect to the debt of any state, by which such exchange should have been made, should be suspended, until it should appear to the satisfaction of the Secretary of the Treasury that certificates issued for that purpose by such state had been re-exchanged or redeemed; or until those which should not have been re-exchanged or redeemed should be surrendered to the United States."

Could language be more explicit than this? Were these certificates not *issued as acknowledgments or evidences of debt*? Were they not issued, in lieu of others, for such *compensations and expenditures* as are here mentioned? Or if not; are they not such as were specially provided for by the 17th and 18th sections of the law just read? And yet say the gentlemen, they were not subscribable, even independent of the repealing Act of 1789! But why not subscribable? Why say our opponents, because the 17th and 18th sections were inserted lest a *very few* of the New-Loan certificates, might be subscribed *by mistake*.—But is any such reason assigned, or can any thing like it be discovered in either of these sections? Surely not; but on the contrary, the reason, the letter and the spirit of the law are general, and there is nothing but ingenuity to restrain it, to a *very few cases happening by mistake*.

But it is objected, that none were subscribable but such as were *recognised and acknowledged* by the state, and it is added, that these were rejected by the law of 1789, and could not therefore be subscribable, *even though that Act were void*.

To this I answer; that in no part of the Act of Congress, do we find, that to render a state debt subscribable to the loan of the United States; it must be *recognised and acknowledged* by the state. The words are,

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“ Shall be payable in certificates, issued by the respective states, as acknowledgments and evidences of debts by them owing”—These certificates were issued by the state of *Pennsylvania*, as *acknowledgments and evidences* of debts by her owing, and if these debts still continue, they are *acknowledgments and evidences* thereof, and of course are subscribable, whether she now chuses to *recognise* and *acknowledge* them or not. Can a debtor, by refusing to *recognise* and *acknowledge* a debt, alter the nature of that debt, or lessen his obligation to pay it? Let us, Mr. Speaker, examine this doctrine a little further—The gentlemen say, that these debts were not subscribable, *even though the law of 1789 were void*; because the passing of it, shewed, that it was not the *will* of the state to *recognise* and *acknowledge* them—The *law of the state* is the *will of that State*. and nothing *short of that law*, can manifest that will. The law is the only *organ* by which the state can express her will, and she cannot do it in any other way—she can *recognise* nothing; she can *acknowledge* nothing, but by her law—By the law of 1786 she *recognised*; she *acknowledged* the New-Loan debt, and her *will* being manifested upon that occasion, cannot be withdrawn, nor can her *recognition* or *acknowledgment* cease, unless she had *power to repeal*, and actually *did repeal* the assumption of the New Loan debt—yet we are told that the Act of 1789 *even if null and void, and not the law of the State, manifested the will of the State!*—It has been added, Sir, “ That the late House of impeachment, by voting, that the law of 1789 rendered the New-Loan certificates no longer a debt, or evidence of a debt due from *Pennsylvania*, shewed that *Pennsylvania* did not acknowledge the debt, and that therefore it was not subscribable:” If, Sir, that House (*but a single branch of the Legislature*) passed that vote, with the intention, that this use should be made of it, the guilty Members ought to have stood, where Mr. Nicholson now does, and received at least as heavy a punishment as can be demanded upon him—I freely acquit them
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however of any such intention, while I must express my astonishment, at the attempt which has been made!

But we are told that "The Governor and the other officers of government do not recognise the debt, and therefore the debt was not subscribable."—What strange doctrine, Sir, have I now to encounter! What right has the Governor, or any officer of government, to *recognise* or to *reject* any thing, but what is *recognised* or *rejected by the law*?—If by a solemn existing law, the debt is recognised, can that be prevented by the Governor's will?—Suppose his will, and the will of the state, expressed by her law, to be different, which must prevail? If the doctrine contended for is true, the defendant should have been impeached, for acting, not against law, but against the opinion or will of the Governor—or perhaps, against the opinion or will of the Attorney-General, which in questions of law, directs the opinion or will of the Governor, and who is now of counsel against Mr. *Nicholson*!

Let us next, Sir, examine the opinion of the late Attorney-General of the U. S. since it has been given in evidence, and relied on by the prosecutors. (See p. 81-2.)

Without taking the objection, as I certainly might, that in point of law, this opinion is not legal evidence, I shall wave the objection; since it will presently appear, that the opinion is so *harmless*, as to be of no consequence either way—The public discussion of the propriety of an opinion, of a brother practitioner, is an unpleasing task, but when it is given in evidence, in order to shew what the law is, it becomes as fair an object of free examination, as the opinion of a Judge when under examination upon a writ of error.

The late Attorney-General *was* "of opinion that the New-Loan certificates were abolished by the Acts of the 27th March, 1789, and the 20th of March, and 1st of April, 1790," but as no Act of any kind was passed on the 20th of March, 1790, except one for the sale of the barracks at *Lancaster*, and another for reducing the tax upon writs, it is fair to conclude, that this

This opinion was given, without much *enquiry*, and *upon but very little consideration*. This supposition is rendered more than probable, when we consider, that in the course of the trial, it has been often stated and never denied, that the same gentleman afterwards gave (and I presume on more mature reflection) an opinion on the same point, on the other side of the question! The last opinion, tho' often called for, does not appear.—We have traced it to the hands of the committee of impeachments, and as it is stated without contradiction to be in favor of Mr. *Nicholson*, it may not perhaps have been thought *worth preserving*.

In the opinion which does appear, he begins with saying—"What may be the result of a contest between the holders of those certificates, and the state of *Pennsylvania*, I presume not to determine—But that between the United States, and that State I have no difficulty in deciding," and he concludes by saying—"I am of opinion, that the Acts of the 27th March, 1789, and of the 30th of March, and 1st of April 1790, abolished these certificates as debts of the state, except for the purpose of being re-exchanged for Continental certificates, and therefore that the former, as wanting the due recognition from that State, cannot be legally received upon loan."

It is not easy to comprehend, and it is still more difficult to reconcile the various parts of this opinion—Mr. *Randolph* seems not to have been able to *establish the premises* either way, but to have been very capable of *drawing his conclusion*, with great clearness. If a conclusion without premises, is to be regarded, the weight of his authority is against us, but if premises are essential to a conclusion, it will be found that his opinion can be of no weight at all.

I have said, Sir, that Mr. *Randolph* drew his conclusion without determining on the premises, and that this was the case will sufficiently appear from the following remarks—"What may be the result," says he, "of a contest, between the holders of those certificates,

and the state of *Pennsylvania*, I presume not to determine," and I undertake to prove that without first determining this, or at least forming an opinion of the law on the subject, it was impossible for him to give an opinion on the question submitted to him, or to draw any conclusion whatever. The question of law was precisely the same, between the then holders of the certificates, and the state of *Pennsylvania*, as it would be, between the United States, (should they become the holders) and *Pennsylvania*—The certificates were transferrable and payable to bearer; if therefore they were *valid* in the hands of the then holders, they would be equally so, when in the possession of the United States; but if they were not *valid* in the hands of the then holders, neither could they be so, in the possession of the United States. Mr. *Randolph* however finds the question so difficult, as between the then holders, and the state of *Pennsylvania*, that he cannot, or will not presume to determine it, but he is nevertheless clear in his opinion in favour of *Pennsylvania*, on the question between her and the United States, should they become the holders or bearers of the certificates. Nothing can I think more fully expose the impropriety of this opinion than the case which I am about to put.

In *Pennsylvania* a bond is transferrable by assignment; these certificates were transferrable by delivery. Suppose I have a bond from my debtor, who refuses payment on the ground of its having been already discharged—This he alledges to be the case; as *Pennsylvania* does with respect to the certificates under consideration, and I deny it, as is done by the certificate-holders.—If I am right, I have a legal claim upon him; and so have the holders of certificates if they are right, upon the state; but if I am wrong, I have no such legal claim; in like manner if the holders of the certificates are wrong, they have no such legal claim—If I assign the bond, my assignee has as good a claim as I had, and in like manner, if the holders of the certificates transfer them to the United States, the United States cannot be

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in a worse situation than the holders were—There are many cases in the law, where the assignee or indorsee is in a better situation than the original payee was, but there is no case in which that situation can be worse; yet Mr. *Randolph* determines against the transferee, tho' he cannot undertake to say, what the law may be between the original parties!

Again, Sir; he is of "opinion, that the Acts already mentioned, abolished the certificates as debts of the State, except for the purpose of being re-exchanged," and yet he will not presume to determine the question! How can he be of opinion that they are abolished, if he can give no opinion between the holders and the State! Since the question of abolition, altogether depends on a right opinion being formed as between the holders and the State!

In short, Sir, the different parts of this opinion are entirely at variance, and the learned gentleman who gave it, appears to have had "*no difficulty in deciding*" while he "*could not presume to determine!*"

It concludes by saying, "and therefore the former, to wit, the New-Loan certificates, as wanting the *due recognition* from the State, cannot be legally received upon loan!"—What is meant by these words, "*as wanting the due recognition from the State*" I cannot possibly say, since the gentleman who made use of them, "will not presume to give an opinion on the existing law of the State, as between her and the holders of the certificates—She cannot, as already observed, *recognise* them in any other way than by law, and without forming an opinion on the law, it is to me inconceivable how an opinion can be formed, that they want her *due recognition*.—If the former parts of the opinion were at variance, this seems to be altogether incomprehensible!

Had the Secretary of the Treasury been vested with unlimited discretionary powers, to admit of, or reject such subscriptions as might be offered, and had this opinion been intended to direct a prudent exercise of such

such powers, it might perhaps have been less exceptionable.—But no discretion was left to him; the law of Congress was *express and mandatory upon him*, to admit of the subscription of all such debts as were within its meaning.

Caution in doubtful cases was necessary, and the taking of legal advice was prudent, but if he erred, and under any advice whatever, refused subscriptions, which the law authorised, he would have been compelled by a *mandamus* from the Supreme Court of the United States, to admit of such subscriptions.

Nor had the State of *Pennsylvania*, as has been pretended, any thing to do with the New-Loan certificates being subscribed or not; any more than a person, who subscribes a note, or executes a bond, has the right of ordering or preventing an assignment.

Wherever the security is by law transferable, it belongs to the holder of it, and to him *only*, if he can find a purchaser, to say, whether he will part with it or not.—If the supposed debtor means to contest payment, he may do it after the transfer, as well as before, and in most cases on the same principles. The subscribing of the the New-Loan debt, to the loan of the United States rested entirely with *them*, and the holders of the certificates.—If the debt was not due by *Pennsylvania*, such subscription could not affect her; if it was due, she could not prevent the subscription, and of course the reason assigned for the New-Loan debt not being subscribable to the loan of the United States, because it wanted the due *recognition* of the State of *Pennsylvania*, is altogether unfounded. I therefore think, that the opinion of the late Attorney-General, may with great propriety, be thrown into the old ward-room of the Senate, as mere useless lumber!

I shall take no notice Sir of the Act of the 1st of April, 1790, because, tho' relied on by the late Attorney-General, as one of the Acts which abolished the New-Loan debt, I do not see how it can possibly affect the question in the smallest degree. What he has said

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respecting that Act, as well as a supposed one of the 30th of March, 1790, sufficiently shews however, that he did not think, the New-Loan debt was abolished by the Act of 1789. His words are "I am of opinion that the Acts of the *Pennsylvania* Assembly of the 27th March, 1789, and of the 30th March, and 1st of April, 1790, abolished these certificates as debts of the state, &c."—This surely amounts to a declaration that they were *not abolished*, as has been contended by the Act of 1789, *only*; for if they were abolished by that Act, they could not possibly be abolished by the three Acts taken together, nor could either of the two last operate in the smallest degree towards *abolishing* a thing which had been *abolished* before—It follows then, that unless the two last Acts operate in some degree towards *abolishing* the certificates, they are not, on Mr. *Randolph's* construction of the Act of 1789, abolished at this day; but as the only Acts which were passed on the 30th of March, 1790 related to the sale of the barracks and reducing the tax upon writs, they could have no effect in the way contended. The Act of the 1st of April, 1790 is altogether silent on the subject, and no man who reads the whole of it, can fix on any part, which tends in the smallest degree, to abolish either the certificates or the debt. If then it is true, as admitted by Mr. *Randolph*, that the Act of 1789 did not *of itself* abolish the debt, and if neither that of the 30th of March, nor of the 1st of April, 1790, came in aid of it, Mr. *Randolph's* opinion should, on his own principles, have been, that the certificates were *not abolished*.

It has in the next place been alledged, that "The New-Loan certificates, even tho' not abolished, were not subscribable to the loan of the United States;" because, say the gentlemen, "They did not bear interest;" but unfortunately for them, they are no less mistaken here, than in any of their former points: The certificates and the law under which they were issued declare, that they shall bear an interest of six per cent. and altho' the law of 1789 prevented the holders from receiving

ceiving the interest for the present, yet if it did not abolish the debt, the interest ran on, until means of payment should be provided—a debt does not the less bear interest, because whether owing to its not being payable till a future day, or to the inability of the defendant, or any other cause, the creditor cannot procure payment for the present, and is obliged to wait for both principal and interest, until some future day. These certificates bore interest, and the interest as well as the principal would form a sett-off between the United States, and the state of *Pennsylvania*.

It has also been said Sir, that no part of the New-Loan debt was subscribed under the first Act of Congress, and as the last Act is, in this particular, but a continuation of the former one, it has been concluded, that the debt is not subscribable under either. To this I answer, that under the first Act, it was not the interest of any man to subscribe the New-Loan debt, because at *that time*, means of redeeming it at the Treasury of *Pennsylvania* were not provided, and that therefore no one was so silly as to do an act from which he could derive no benefit; but that such means of redemption were afterwards provided, and therefore such subscriptions took place, when they were found to be beneficial. The conclusion, that the New-Loan debt, was not subscribable under the last Act of Congress, because no part of it was subscribed under the first Act, is certainly then without foundation.

The honorable Senate have now Mr. Speaker, heard my reasons for thinking that “THE NEW-LOAN DEBT WAS SUBSCRIBABLE TO THE LOAN OF THE UNITED STATES,” and I proceed to prove, what seems to me to be a necessary consequence;—namely,

That “IT WAS OF COURSE REDEEMABLE AT THE TREASURY OF PENNSYLVANIA.

Before turning to the particular law of *Pennsylvania*, on which this question depends, it may not be amiss to obviate some objections, which have been made on ge-
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The first of them is; "That *Pennsylvania* at the time of passing the law in April 1792, for the redemption of her debts at the Treasury, *only* wished to free herself from her embarrassments, by providing for the discharge of such debts as were funded, and by the existing law could be demanded from her; but that as the New-Loan debt, admitting its existence, was not funded, and could not by the existing law be demanded from her, she was not embarrassed by it, and of course did not mean to provide for its redemption."

If, Sir, I could pay *Pennsylvania* so poor a compliment as to suppose, that in April 1792, when her situation was flourishing, and her means were great; she was mindful of her own embarrassments *only*, and careless of all others; when those *others* had been occasioned by her non-fulfilment of her assumption, I might perhaps admit the propriety of this reasoning; but as I do not believe this to have been the case, it must meet with my hearty opposition—on the same *very honorable principles*, and from the same *very honorable motives*, she might at *once* have got rid of *all her embarrassments*, by *unfunding all her debts*! Why do business by halves, if she was not restrained by principles of virtue and morality? Why at this time, when from the proposed loan of the United States, and change of circumstances, she was enabled to perform, what she had solemnly assumed to do, and that too, without the smallest injustice to herself, or any thing more than justice to her creditors, are we to suppose her capable, of the *low and grovelling* ideas! the *biggling, chafering and peddling* conduct imputed to her, by her *honorable guardians*!—If she owed these debts, she was bound by her plighted faith; by every principle of virtue and morality to discharge them, at the very moment when she could do it with safety to herself, and when she was enabled thereto by her circumstances—That moment had arrived, and when the means were in her power, I

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believe it to be an unmerited reflection, to suppose that she had not the will.

I have said, Sir, that “*Pennsylvania* might redeem these debts, without the smallest injustice to herself, or any thing more than justice to her creditors;” and she herself shall testify to the truth of this doctrine—The United States had done much for their creditots, but such were their arrangements, with respect to the six *per cent.* the three *per cent.* and the deferred stock, that they had not, at least in the opinion of *Pennsylvania*, done ample justice.—*Pennsylvania* therefore by an Act of the 9th of April, 1791, after reciting “That Congress had by their Act of the 4th of August, 1790, proposed a certain loan; that a compliance with it would greatly benefit this commonwealth, promote the plan of the general government, and facilitate the settlement and liquidation of the accounts depending between *Pennsylvania* and the United States; and that in order to induce the creditors of this state to subscribe to the said loan, and at the same time, to *preserve the faith and honor of the commonwealth, by indemnifying them for the injury which they might sustain in consequence of such subscription,* IT SHOULD BE ENACTED AND IT THEREBY WAS ENACTED, that “Every creditor of this State, who should subscribe to the said loan a certificate whereon interest should be by law payable annually, at the treasury of *Pennsylvania*, should, besides the said certificate, which such creditor was thereupon entitled to have and receive from the United States, in pursuance of the said recited Act, be entitled to have and receive from the commonwealth, certificates purporting that the state stands pledged from the first of January next, to pay six *per cent.* interest annually, on that part of the subscribed debt, which is termed the deferred debt, until the United States should make provision for the payment of the said interest, and also that the state stands further pledged to pay an additional interest of three *per cent.* annually, from the 1st of January next, on that part of the subscribed debt, which bears an interest

terest of three *per cent.* which said three *per cent.* should continue to be paid half yearly, unless the said United States should at any time thereafter increase the rate of interest of the said three *per cent.* stock; in which case the interest to be paid by the state should be proportionably reduced; and six *per cent.* interest, on that part, termed the deferred debt, should be continued to be paid, half yearly, until the United States should provide for the payment of the interest on the said deferred debt."—I think nothing can be more evident, than the *will* of *Pennsylvania*, manifested by this law, that full justice should be done to her creditors, by making up the deficiency, unprovided for by the United States; and that she deemed it unjust for any of them, to be left without the right of participating in some shape or other, of the like advantages which this Act afforded—Those of them who subscribed the New-Loan certificates, to the loan of the United States, had this justice and no more. The supposition therefore, that *Pennsylvania* did not mean to afford them the right of redemption at her Treasury, carries with it a high charge of partiality and injustice with respect to her own citizens. If admitted, it would in fact amount to a declaration on her part, that although the pretensions and the rights of her creditors were alike, she meant to administer justice to them by different weights, and unequal measures; and that while she amply provided for a part of them, she intended, that those who subscribed to the second loan, *under her own invitation* should sustain a heavy loss.

But exclaim the gentlemen;—were these subscribers to have the *enormous* sum of twenty shillings in the pound! No Sir; they were not to have the *enormous* sum of twenty shillings in the pound;—They were only to have the *just* and reasonable sum of twenty shillings in the pound; and that *that* sum was *just* and reasonable, but not *enormous*, appears,

1st, From *that* sum being originally and incontestably

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bly due, and so acknowledged by *Pennsylvania* by her Act which has just been read; and

2d. From her making up by that Act, to a part of her creditors, the same measure of justice which we now claim for another part of them; *all of whose merits are admitted to be the same.*

Hence it follows, that on principles of equal justice, there is every reason to conclude, that *Pennsylvania* really intended by her Act of April, 1792, to render the New-Loan debts, subscribed to the loan of the United States, redeemable at her Treasury.

But the gentlemen exclaim again;—"Is it possible to suppose, that *Pennsylvania* really intended, by her Act of April, 1792, to put herself intirely within the power of the United States, by providing for the redemption of *every species of pretended debt*, which they might think proper to assume!—I answer, that nothing can be more certain, than that she did not; and I freely admit, that if the New-Loan debt was not *a real*, but only a *pretended one*, I should be so far from contending that it it was redeemable, that I should have taken no trouble to prove its existence, or that it was subscribable.

We are again told Sir, that the objects of redemption are enumerated in the 2d section of the Act of *Pennsylvania* of the 10th of April, 1792; and that, as the New-Loan debt is not among them, it is not within the provisions of that Act, nor redeemable.

If the premises were admitted to be true, the conclusion might perhaps be incontrovertable, but if they are false, it is certainly unwarranted. An examination of them is therefore necessary.

To me it appears, that THAT section of the Act of April, 1792, does not enumerate all the objects of redemption.—I admit that it enumerates all the objects of immediate redemption from the particular funds specially provided by the early part of that Act; and I think that I may safely make this admission, without weakening, or detracting from my opinion, that the
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same Act makes eventual provision for cases not enumerated in the 2d section:—At the time of that Act being passed, the first loan of the United States was closed, and it could not possibly be known whether it would or would not be opened again—*eventual* provision might therefore be very proper, but, *immediate* and *certain* provision for the redemption of the New-Loan debt, must have been very improper at that time.

Pennsylvania then knew that she had *certain debts* to provide for at *all events*, and these she enumerated in the 2d section and took care to make special and particular provision for;—but she also knew, that she owed certain other debts, which she deemed it proper to provide for the payment of, or not, as the United States should, or should not open or extend the loan—If they should not, she did not think proper to provide for their redemption, but if they should, she deemed it proper, and I think that if we carefully attend to the 2d and 6th sections, it will appear that the first was intended to make *certain* and *immediate* provision for the discharge of certain debts; the latter to make *eventual* provision for certain others, if the loan of the United States should be again opened—That the 2d section does not enumerate *all* the objects of redemption at all events, is I think evident both from its letter and spirit.

After providing, in part, an aggregate fund for the immediate discharge of the enumerated debts, we find the preamble to the 2d section, to be worded as follows—“And in order to provide effectually for the redemption of CERTAIN public debts herein after specified, upon just and reasonable terms, “BE IT ENACTED,” &c. —The law then proceeds to encrease the funds and to direct the order in which *certain* debts shall be discharged—Now, Sir, what is the meaning of these words, “In order to provide for the redemption of CERTAIN public debts?” Certainly not that *all* of them were to be provided for by the section, which is introduced by these words, and the expression clearly shews, that *Pennsylvania* acknowledged other ones, besides the CERTAIN ones

ones referred to in the preamble, and enumerated in the enacting clause. Had not this been the case, the expression would have been, In order to provide for the redemption of THE public debts, instead of providing for *certain* of them.—The expression; THE public debts, would have been the same with that of *all* of them, but the words CERTAIN of them have certainly a more confined meaning, and the using of this language, shews, that she *recognised* and acknowledged *other* ones besides those enumerated in this section—But it is not pretended that she owed any other debts than the enumerated ones, except the *New-Loan debt*, and the *debt* due on the unfunded depreciation certificates. If then the expression used in this law, shews that *Pennsylvania* acknowledged *other* debts, than the enumerated ones, it also shews, that she acknowledged the New-Loan and unfunded Depreciation-Debts, to which, and to which only, they clearly implied, and strongly marked exception could relate. The truth is, that all the debts enumerated in the 2d section, were originally contracted by, and were due from herself—she therefore by the first and second section provided a fund for their *immediate* discharge, and by the 2d section, she directs the order in which they shall be discharged out of it; and this necessarily lead to their enumeration—But as she did not intend that the New-Loan and unfunded depreciation debts, should be paid out of this fund, she could with no propriety enumerate them, as coming within this provision, for immediate redemption.—These debts she considered as not being originally and properly speaking her own debts, but the debts of the United States, and she therefore thought proper to let them rest as they were, until the United States should extend or again open their loan, and that their redemption at the Treasury of *Pennsylvania*, should depend on this event taking place or not. This will clearly appear from the 6th section of the same law—“Be it enacted,” says that section, “That if Congress shall on or before the first of July next, renew and again open
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the subscription to the loan heretofore proposed to the State creditors, or shall in *any other manner or upon any other terms*, provide for the assumption of the non-subscribed debts, owing to such State creditors, the holders of any certificates, subscribable to the subscription so renewed, or entitled to the benefit of such other provision, shall be entitled to receive the nominal value of the said certificates, from the state Treasurer, upon this condition that they shall and do subscribe to the loan so renewed, or acquiesce in the terms of such other provision, and shall on or before the said first of July next, transfer to the state Treasurer, for the use of commonwealth, every certificate which they shall receive from the United States in consequence of such subscription, or all the interests and benefits to be derived from such other provision, together with the proper evidences thereof.”—Congress did within the time here mentioned again open their loan, and therefore this section which was at first but conditional, now became absolute. If *Pennsylvania* did not acknowledge other debts, besides these enumerated and provided for by the 1st and 2d sections; what use was there in inserting this clause? *none at all*.—Its insertion however clearly shews, that *Pennsylvania* did acknowledge other debts, besides the *certain* first enumerated ones, and that she intended to provide for their redemption, if the loan of the United States should be again opened—But she owed no others, except the *New-Loan and unfunded depreciation debts*, and therefore, she could not by this clause *recognise* or mean to provide for the *redemption* of any others but these.

It has been warmly contended, that “The second section is equally extensive with the sixth, and that the latter does not embrace a single object which is not included in the former.” Can any thing more clearly shew, the futility of this objection, than by considering that; *if it was true*, there could be *no occasion for the sixth section*; nor can it *possibly have any object in view*; and by considering further, that the second section,
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makes *immediate* and *certain* provision, for the cases therein mentioned, and that the sixth section only makes *distant* and *conditional* provision, for the cases mentioned in it. *Can therefore the cases be the same?*

Again;—The words “*certain* debts,” cannot by any just construction, extend to *all* debts; but the words “The holder or holders of *any* certificate or certificates,” is the same with *every*, or *all*, without an exception of a single one; and that they were so understood by the Legislature of April 1792, is clearly deducible, from their adding the sixth section; which could not be necessary unless my construction is right.—In answer to this it is true, Mr. Gallatin is brought forward to prove, that the sixth section was intended as a proviso to the second, and to restrain, but not to extend it—He seems fond of appearing in the double capacity of counsel and witness, but I think that neither his evidence nor his *arguments*, have answered the purpose for which he was called.—If the sixth section was intended as a proviso to the second, it would have formed a part of it, or at least been attached to it, instead of being placed where it is—He tells us indeed that *this was the case originally*, but that before the passing of the bill into a law, the alteration took place—This may perhaps have been so, but if it was, it only proves that an *alteration of intention also took place*, and that it was finally concluded that instead of its being a proviso to the second section, it should be a separate, distinct, enacting clause. What Mr. Gallatin meant or intended, or indeed what one branch of the Legislature meant or intended, is immaterial at present—The law must speak for itself, and if this were not the case, we might have as many clashing constructions, as there are branches of the Legislature.—We have heard much, Sir, of Legislative constructions, but it has been reserved to Mr. Gallatin, to fix a construction on this law, by proving what one branch of the Legislature, or rather what *he himself* intended! If this be admissible, we must look, not into the statute book to know what the

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the meaning of the law is, but must endeavour to penetrate into the hidden recesses of Mr. Gallatin's mind, and there grovel for it in the dark !

The business of a proviso, Sir, is to *restrain* and *limit*, that which has gone before, but there is not a single feature of this kind, in any part of the sixth section. It is not the business, Sir, of a proviso, to *enlarge* and *extend*, but the sixth section is a new, independent clause, *enlarging, extending* and making *further* provision, without a single condition, or restriction, on any thing which had been before enacted—If intended as a proviso, upon the second section ; and if intended to relate to the objects contained in it, and to no others, proper terms of reference would have been made use of, to connect them together, and to shew the dependance of one upon the other—The language of the sixth section would not have been that the “ Holders of any certificates ” shall, &c. but it would have been the holders of the *said* certificates ; or of the *aforsaid* certificates ; or the certificates *herein before mentioned*, or some expression of the like import and meaning, would have been made use of, so as to confine the provisions of the sixth section, to the cases mentioned in the second.

Nor is it possible, Sir, for that to be a proviso, which is *more extensive than the enacting clause*.

Also that the sixth section has never been considered as a proviso upon the 2d section, nor confined to the cases mentioned in it, is clear from what I am now about to say—It is admitted that the unfunded depreciation certificates, are not included in the second section, and that *that* section makes no provision for their redemption at the Treasury of *Pennsylvania*, and yet it is in proof, that it has been the constant practice, for them to be *so redeemed* under the sixth section.

Among others who have understood the law as I do, and whose old unfunded depreciation certificates, were redeemed in this way, were Mr. *Rittenhouse* : The late Mr. *Powell*, Speaker of the Senate, at the time when the redemption law of April, 1792, was passed ;

fed; and Judge *Addison* and Judge *Yeates*, who were very competent to the true interpretation of the law;—The Register-General certified the payment to be due; the Governor drew his warrants for payment, and payments were actually made by the State Treasurer—Why then is criminality imputed to the Comptroller-General and to *him only*? and why do not these mighty avengers of the law, direct its sword against all these other officers of government!

They perhaps have not the misfortune to *have fallen under the displeasure of the House of Representatives*!

But further Sir; it is in evidence, that *Mr. Gallatin* himself, in a conversation with *Mr. Donnaldfon* expressed his opinion, in clear and pointed terms, that the old unfunded depreciation certificates, were, under the 6th section, *redeemable at the Treasury of Pennsylvania*.—He therefore, at least at that time, thought the 6th section was *more extensive* than the 2d; that the one was *not a proviso* on the other; and that *other* cases than those mentioned in the 2d section were intended to be provided for by the 6th.

But say the gentlemen, is it possible to suppose, that the State meant to sacrifice her three *per cent.* stock, in order to redeem the New-Loan debt, which was properly the debt of the United States?

Whether such a supposition is possible or not, I do not think worth considering, since we have made no such supposition, nor is it at all necessary to our construction.—The 2d section directs the sale of the three *per cent.* stock, for the redemption of the debts enumerated in that section, and we admit, that the New-Loan debt is not enumerated in it, nor entitled to redemption out of the fund which it provides.

We have been told Sir, by the learned counsel, “That if the 6th section is not to be taken as a proviso to the 2d one, or if it is interpreted to extend to a single new object, it must extend *to all the debts, due from all the States in the Union, to their own citizens*! and that agreeably

greecably to our construction, Pennsylvania *has provided for their redemption at her own Treasury!*"

This is to be sure a fine flight in the regions of fancy and imagination, and supposing it to have been so intended, I shall rest satisfied with gazing with admiration and wonder at the pleasing phantom!

I have done with this point Mr. Speaker, and shall proceed to the

Second position;—Namely, THAT THERE WAS AN APPROPRIATION MADE BY LAW, FOR THE REDEMPTION OF THE NEW-LOAN CERTIFICATES, AT THE TREASURY OF PENNSYLVANIA.

The Constitution of *Pennsylvania* provides, that "NO MONEY SHALL BE DRAWN FROM THE TREASURY, BUT IN CONSEQUENCE OF APPROPRIATIONS MADE BY LAW." and one of the articles charges, that the defendant "with a view to his own emolument, did under colour of his office, certify to the Governor, that certain debts, including the said certificates, but not naming or describing the same, were redeemable and payable when, *no fund was by law provided for paying the same.*"—This charge is certainly a pretty high one, but if it shall appear, as I trust it will, to be without foundation, it must fall.

The Act of March the 1st, 1786, created the New-Loan debt and funded it as to part.

The Act of the 27th of March, 1789, unfunded it altogether.

An Act of the 7th of April, 1791, for "appropriating certain funds and revenues for the support of government, and the payment of the public debts," after making certain specific appropriations, provides by the 12th appropriation, that the residue of the aggregate fund therein mentioned, shall be applied "to pay all warrants thereafter to to be drawn for *claims* and improvements, by virtue of *any law or laws of this commonwealth.*"

And the 6th section of the Act of the 10th of April 1792, provides that "The holder or holders of any

certificate or certificates, subscribable to the loan of the United States, if it should be again opened, shall be entitled to have and receive the nominal value of the said certificate or certificates, *from the State-Treasurer*, upon subscribing to the said loan, and transferring to the State-Treasurer, for the use of the commonwealth, the certificates which they should receive from the United States, in consequence of such subscription."

The certificates certified to the Governor by Mr. *Nicholson* in the manner already mentioned, were the New-Loan certificates; they had been subscribed to the loan of the United States; such transfer as is in this Act mentioned had been made, and if I have proved, that they were subscribable to the loan of the United States, and redeemable at the Treasury of *Pennsylvania*, I think hardly any thing can be more clear than that "*an appropriation was made by law for that purpose.*"

It has been objected, Sir, "That Mr. *Nicholson* certified these debts to be payable *out of the funds* provided by the Act of the 10th of April, 1792; that he has been guilty of prevarication: has been shifting his ground; flying backwards and forwards; uncertain what to fix upon, so as to save himself; that he began with the Act of 1792, and finding *that* source to fail him, he was reduced to the necessity of employing *ingenious* counsel, more *ingenious* than himself, to find funds, which he never thought of; that he concludes with saying, that an appropriation was made by the law of April, 1791;" and our opponents conclude with saying, "That even if an appropriation was made by this Act, Mr. *Nicholson* is nevertheless guilty," because say they "he neither knew or dreamed of an appropriation having been made for this purpose, by the Act of April, 1791, at the time of his certifying to the Governor."

The first answer which I shall give to these assertions is, that *no one of them is true*; and the next; that if

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Mr. *Nicholson's* counsel are more *ingenious* than he is; yet that he himself is in this particular more *solid* than the adverse counsel are.

The 12th appropriation of the Act of April, 1791, is for "The payment of all warrants thereafter to be drawn for *claims* and improvements, by virtue of *any law or laws* of this commonwealth," and the Act of April, 1792, declares that the holders of certificates, who should subscribe to the loan of the United States, and make a transfer to *Pennsylvania*, should be entitled to payment at the Treasury of *Pennsylvania*. The Act of April, 1791 therefore contained an appropriation for all *claims* against the commonwealth, and the Act of April, 1792 directed payment to be made—It was therefore *by* the Act of April, 1792, that payment was to be made, out of an appropriation made by the Act of April, 1791.—Payment could not be made by the Act of 1791, because the Act of 1789 had prevented payment, and therefore, until the Act of 1792 directed payment to be made at the Treasury of *Pennsylvania*, payment could not be made at all—Mr. *Nicholson* in all his certificates to the Governor certified "payable *per* Act of April, 1792," (Here Mr. *Lewis* called for the warrant book and shewed that Mr. *Nicholson* had certified in the manner which he now stated) and I shall not I hope be called upon to prove, that if the debt was "payable *per* Act of 1792," it was payable *by* the Act of 1792, though that payment was to be made out of funds provided by an appropriation contained in the Act of April, 1791—This ground was originally taken by Mr. *Nicholson*, as is proved by every certificate which has *been* produced; from this ground he has never departed, nor has he varied in the smallest degree—Instead of his *ingenious* counsel finding out this ground for him, he pointed it out to them, and had the House of Representatives; the managers or the opposite counsel, understood the subject as well as Mr. *Nicholson* did, all these severe observations might have been spared.—There is not a single word in a single instance, of all the

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the cases certified to the Governor by Mr. *Nicholson*, which has the smallest semblance to what has been imputed to him, nor which warrants in the smallest degree, any one of the assertions on which I at present animadvert.

That the New-Loan debt was payable by the Act of April 1792, and not by the Act of April 1791, will clearly appear when we consider, that after the passing of the first, and until the passing of the last, it was *not payable at all*. It was a claim against the commonwealth it is true, but as payment of that claim had been stopped by a former law, it could not take place, until it was directed by a subsequent law. This was directed by the Act of April 1792, and not before, and of course it was by this Act and by no other that it was payable.

Here, Sir, it is material to recollect, that in every instance of the old Unfunded Depreciation certificates, Mr. *Nicholson* certified to the Governor in *the same words* as he has done with respect to the New-Loan debt; that the Register-General joined with him in certifying in like manner; that warrants were thereupon issued by the Governor, and payments were made by the Treasurer, to *able law judges*, without any person supposing it to be wrong, until the discovery was made by the House of Representatives. The question as to an appropriation having been made by law, or not, was precisely the same in both cases, and what was right in one of them, cannot be wrong in the other.

But we are told "That the Act of the 26th of March 1789, set apart only £. 10,000 annually for *claims* and improvements, and as *that* sum was too small to satisfy the New-Loan debt, the fund could not be intended for that purpose." This I admit to be true, and I have no objection to furnishing our opponents with a much stronger reason in support of their argument. *That* law was passed the very day next preceding the passing of the law which stopped payment of the New-Loan debt, and while the bill for that purpose was before the House,

House, so that payment could not have been then intended *out of any funds*.

This does not however operate against us, since insufficient to this purpose, the annual sum of £. 10,000 may have been in March 1789, when *all the New-Loan certificates were in circulation*, the residue of the aggregate fund set apart for claims and improvements by the Act of April 1791, was abundantly more than sufficient. At this time there were but *few* of the New-Loan certificates in circulation, and the sum set apart by the 12th appropriation for claims and improvements, was so great, as, among many other things, to furnish the *whole of the State subscription to the Pennsylvania bank*.

It is further objected, "That the law of April 1791, did not contemplate the payment of the New-Loan debt, since in none of the enumerated appropriations is that debt mentioned." This may perhaps be true, since I can hardly suppose, that the Legislature of 1791, could contemplate providing for the payment of a debt, which was not at that time payable at all, nor until more than one year after, and this sufficiently accounts for there being no special appropriation for that purpose. There is not however a shadow of pretence for the objection, since the clause specially appropriates all the residue of the aggregate fund "To pay all warrants hereafter to be drawn for claims and improvements by virtue of any law or laws of this commonwealth"—This surely supercedes the necessity of a special appropriation upon every occasion, for claims then due and payable, but not otherwise provided for, or which should be made due and payable by subsequent laws. The Constitution does not require a special appropriation on every particular occasion, mentioning the object and the fund at the same time : or if it does, the whole of the 12th appropriation is unconstitutional, inasmuch as it mentions no particular object to be provided for, but creates a fund for the payment of all warrants issued under any law for claims and improvements—

ments—In 1791 *Pennsylvania* owed certain debts, and the Legislature provided for their payment, and enumerated certain funds for that purpose; but she also owed many others, of various descriptions, and she knew that she would, under her future laws, be liable for their payment—She therefore by the 12th appropriation, provided a fund “To pay all warrants to be drawn for claims and improvements by virtue of any law or laws.” What the then existing claims were, she did not think it necessary to determine; what claims might be due under any future law or laws, she left to the consideration of future Legislatures, but she provided and appropriated a fund for the discharge of all such claims as were then payable or should be made so; “By virtue of any law or laws of this commonwealth.—By a law of March, 1786, the New-Loan debt was created; by a law of the 10th of April, 1792, it was made payable, and of course it was payable out of a fund provided “to pay all warrants drawn for claims by virtue of any law of this commonwealth.”—Unless therefore the Act of the 10th of April, 1792, is *not a law of this commonwealth*; the law of the 7th of April, 1791, provides and appropriates a fund, for whatever is payable under that of April, 1792.—The constitution only requires, that there should be an appropriation; but there may be one appropriation, for ten thousand purposes;—as well for the future, as the present, and it may be left to future Legislatures to say, what debts shall be contracted or made payable, but when they are contracted and made payable, it will be from this *previous appropriation*, without an additional one being made. If any thing need be added on this subject, permit me to remark, that if a sufficient appropriation has not been made in the manner already contended for, I am at a loss for language which can be more clear or expressive of an appropriation, than that to which I have endeavoured to draw the attention of the honourable Senate.—A fund, says the law of April, 1791, “To pay *all warrants hereafter to be drawn*
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for claims or improvements by virtue of any law or laws of this commonwealth !" By virtue of a law of the 10th of April, 1792, the claims of the holders of the New-Loan certificates were, as we say, entitled to be paid—could I suppose, Sir, that any Legislature after April, 1791, had thought that the Legislature of that time, had made use of language not sufficiently expressive of an appropriation, and to have wished to make use of language more clear, pointed and expressive than this ; "*To pay all warrants hereafter to be drawn for claims and improvements, by virtue of any law or laws of this commonwealth ;*"—I ask what expression more clear ;—what terms more perspicuous ; what language more strong and expressive of an appropriation could possibly have been used ! —If our language affords them, I have no conception of it, nor can I perceive how an appropriation could by any subsequent law have been made, if it was not already done.

I have admitted, Sir, that the Legislature of April, 1791, may not have contemplated the New-Loan debt, but if this proves any thing, it proves what has not, and I am sure will not be contended ;—namely, that nothing made payable by any law, subsequent to that time, and not then in the contemplation of the Legislature, was payable out of the 12th appropriation : The question is not, whether it was in the contemplation of the Legislature of April, 1791 ; but of the Legislature of April, 1792. What adds considerable weight to the idea that the Legislature of April, 1791, intended the 12th appropriation as a fund for the payment of all the un-enumerated debts of the commonwealth, whether funded or not, so soon as the latter should be by law made payable, is a report of the committee of ways and means, on the 8th of February, 1791, adopted by the very House which passed the law of April, 1791. In that report I find these expressions ;—" They have taken into their serious consideration, the situation of this commonwealth, with respect to the various engagements for which the *faith of the government*

government stands pledged, and the resources to satisfy the same. They conceive that at this period, it is peculiarly incumbent upon the Legislature of *Pennsylvania*, by reforming what has hitherto been erroneous, in her policy, and by introducing what may hitherto have been wanting in her measures, to restore and to establish upon a pure and permanent basis, public credit, as a foundation of political prosperity!—"That the present embarrassments of the finances of the commonwealth, chiefly arose from her large unfunded debt; the whole amount whereof is an actual demand against the Treasury, whilst her internal resources can only supply it by slow degrees. A question therefore arose in their deliberations, whether the State ought to submit to the inconveniences and mortifications of an embarrassed Treasury, and *depreciated name*, or resort to her general credit, and the security of the claims which she possesses against the Union for the necessary relief from her difficulties. The necessity of restoring public credit; the justice due to the creditors of the State, and a full conviction of the disgrace in which a free nation involves herself, that either directly or indirectly forfeits her engagements, were considerations too obvious and too forcible to permit your committee to hesitate in their decision." "The large amount of public securities of the United States, which are the property of the State, obliged your committee to take into consideration, the terms of the loan proposed by Congress to the domestic creditors, in the Act, "entitled an Act making provision for the debt of the United States." And although, in their opinion those terms are not commensurate with the just claims of those creditors, yet, unwilling to embarrass the measures of the Federal Legislature, they recommend an acquiescence to the terms offered by Congress in the Act aforesaid. Upon these grounds, therefore, the committee beg leave to offer the following resolutions to the Legislature, for their consideration and approbation, with this prefatory remark, that considering the great inconveniences which have hither-

to accrued in consequence of the special appropriations of specific funds, which have been from time to time, diverted to other purposes, they have thought it proper, for the present year, to form all the revenues of the State into one aggregate fund, *charged with the payment of all the public debts and engagements.*

This report, Sir, having been adopted by the Legislature, is not only indicative of its sentiments, but is expressed in its own words and language.—I read it for several purposes. The shameful imputation has been made against *Pennsylvania*, that she only meant to free herself from her embarrassments; and as she was not embarrassed by her unfunded debt, she did not mean to provide a fund or make an appropriation for its discharge.—If the answers already given to this objection, are not sufficient, I hope that they are afforded by this report.—It was adopted in February 1791 by the *same Legislature*, which in April 1791, created and set apart the fund out of which we say the New-Loan debt is, under the law of April 1792, payable, and it is therefore worthy of peculiar attention. In it we find nothing in support of the assertion, that *Pennsylvania* only intended to free herself from her embarrassments, by providing for the discharge of her funded debts—on the contrary we find her saying, that “The embarrassments of her finances, chiefly arose from her large unfunded debt, the whole amount whereof was an actual demand against the Treasury.” What was this large unfunded debt? Nothing that I know of, except the *New-Loan Debt*, and the debt due upon the old Unfunded Depreciation certificates. Is not this therefore a full acknowledgment of the New-Loan debt? But how it may be asked could she be embarrassed by it? *In promptu est responsio*; and that answer is, that as interest was accumulating and pay-day must come, she felt herself as much embarrassed by the prospect of future evils as by the existence of present ones.

Again, Sir;—she felt an embarrassment from her faith being prostrated and her honour tainted, and from this

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embarrassment she wished to be freed. That I may avoid repetition I will not again read any part of the report, nor be guilty of useless quotations from it, but shall rest satisfied with asking, if its great; nay, its principal object does not appear to be, to restore public faith, by making either immediate or eventual provision for the discharge of the unfunded debt? If this question is answered in the affirmative, how futile must the objection be, that she only wished to free herself from her embarrassments by providing for the funded ones! That she did not make immediate and certain provision for its payment is true, because she did not know whether the loan of the United States, on which that provision was to depend, would or would not be again opened. But she nevertheless *provided a fund and made an appropriation* for the payment, if it should be opened, and the Act of April 1792 fixed the payment upon that fund and appropriation, upon the terms and conditions contained in the last mentioned Act.

The adoption of this report proves,

1st. An acknowledgment of the existence of the New-Loan debt.

2d. The obligation and the will of *Pennsylvania* to discharge it, if a future Legislature should so direct under a loan of the United States; and,

3d. That the 12th appropriation of the Act of April 1791 was intended to answer *all claims* against the commonwealth, not particularly provided for, which were or should be by law payable. I say to answer *all claims*, except as I have already excepted, for in the report are these remarkable words—"To form all the revenues of the State into one aggregate fund; *charged with all the public debts and engagements.*" This report was as has been already observed, adopted by the same House, which very soon after, passed the law of April 1791, and if it is not clearly expressive of the will of that House, that the 12th appropriation should be for the discharge of "*all the public debts and engagements*

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of the commonwealth," I am really at a loss to know in what words that will could be expressed ! ! !

But, Sir, the most important part of this report remains to be mentioned—It offered, for the adoption of the House, a resolution *which was adopted by the House* in the following words, to wit: That the residue of the aggregate fund should be appropriated to the payment and discharge of "THE ARREARAGES OF INTEREST NOW DUE ON THE NEW-LOAN CERTIFICATES."

This resolution was passed before the transactions took place which are imputed to Mr. Nicholson as criminal.

It was passed by the same House, which passed the law of April 1791, making the 12th appropriation, out of which we say the New-Loan debt was by the law of April 1792 made payable.

It shews that *that* House was so far from being of the opinion, that the New-Loan debt had been abolished by the Act of March 1789, that it not only acknowledged its existence, but thought that the interest due upon it, should be paid independent of the loan of the United States.

It shews that the 12th appropriation was intended for this purpose, and although the law passed soon after by the same House, left the same appropriation to satisfy *all claims* which future Legislatures should make payable.

After all this, can it be necessary to say any thing more to prove, that when by the Act of April 1792, the New-Loan debt was made payable, the Act of April 1791 contained an appropriation for that purpose?

Yes! say the gentlemen; for that the words "To satisfy all *claims*" are not descriptive of the New-Loan certificates, since they formed no *claim* against the commonwealth; but were only receipts for the return of the certificates at the pleasure of the commonwealth." With what dexterity do the gentlemen shift their ground? In order to get rid of one difficulty, they

warmly

warmly contended, that the New-Loan certificates did not create a *debt*, but only a *claim* against the State. Lord *Coke* was our authority that the word *claim* includes *debts* and is of more extensive meaning than the word *debt*. They now abandon their former ground, and say that the New-Loan certificates were only in nature of *receipts* for the old Continental ones, but that they *did not amount to a claim against the State*. They are driven to this subterfuge, by our shewing, that the residue of the 12th appropriation is for the payment of all un-enumerated *claims* against the commonwealth; and they can find no way of getting rid of this difficulty, but by contending, that *that* which they had before said *was a claim* against the commonwealth, is *not a claim* against the commonwealth!

It may therefore I think be fairly concluded, that there is not a shadow of ground for this charge, of a *violation of the Constitution*; and that if the House of Representatives had understood the law but half as well as Mr. *Nicholson* did, they would hardly have committed themselves by making it. If *they* were impeached for this part of their conduct, there is perhaps *one ground* on which they might be acquitted.—I will proceed, Sir, to my

Third and last position; namely—THAT NO CRIMINAL OFFENCE IS SUFFICIENTLY CHARGED AND PROVED AGAINST MR. NICHOLSON.

I say *charged and proved*, because *neither* is material if the other is *insufficient*, and they must *both* come home to the defendant in his *official conduct*, or the prosecution must fail. The evidence must support what is sufficiently charged, and it will not be sufficient for it to support any other matter. I need not take much trouble to prove, that there is no ground for the impeachment, unless an offence has been committed by Mr. *Nicholson* in his official capacity. “*The Governor*,” says the Constitution, “*and all other civil officers under this commonwealth, shall be liable to impeachment for any misdemeanor in office.*”

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This surely excludes all ideas of an impeachment, for what was done in any other capacity. If this is attended to, many of the charges must vanish, and unless his certificates are stated and proved to have been given under colour of his office, and of matters relating to his official duty he must be acquitted.

The first article charges that the defendant “ Did under colour of his office recognise certify and declare, the said certificates, commonly called New-Loan certificates, to be subscribable, as debts due and owing by the State of Pennsylvania,” to the loan of the United States.

Did under colour of his office. It is surely not sufficient to state that he did it under colour of his office, without also stating, that it belonged to his office to certify one way or the other, or at least shewing it, by some public law, of which the Senate can take notice. But the truth is, the certifying in the manner he did, had no connection whatever with the duties of his office and it will presently appear, that neither he nor any body else, ever supposed that it had—It is not stated to have been any part of his official duties to certify at all, and unless the managers can shew that it was connected with his official duties, the Senate must, without resorting to evidence, know that the prosecution is without foundation.

Was there any law of *Pennsylvania* which imposed this upon him as a duty? It will not be pretended. Was there any law of the United States which required it of him? No such laws can be shewn, and if there could, and he had abused his trust, he would be amenable in a tribunal of the United States; but not in the tribunal of *Pennsylvania*,

If this is the case say the gentlemen, here is a bold and daring usurpation of power, and of course the defendant is doubly guilty! It seems to be their determination I think, that whether he is guilty or not, he shall if possible be convicted, but it is rather too much to expect that he is to be convicted without a charge. If he is guilty of usurping power, why is he not impeached

peached for it? or if this discovery was neither known nor thought of before, why do not his honorable accusers retire to their own room and vote an additional article against him?—They might do it in *a few minutes* on the *information* of some one of the managers, and without wasting time in *swearing* the witnesses, or even in *examining* them—would not this be better than to condemn a man without a previous accusation. It is better that there should be an accusation, though made in the most irregular manner, than a condemnation without a charge.

But if I admit for a moment that the defendant had certified in the manner alledged against him, that the New-Loan certificates were *subscribable* to the loan of the United States, what has *Pennsylvania* to do with this or how could she be thereby injured? we are told that they were not redeemable at the Treasury of *Pennsylvania*. If this is the case, and if the United States trusting, which it is in proof that they did not, to Mr. *Nicholson's* certificate, admitted of subscriptions not by law admissible, the United States might be injured though *Pennsylvania* could not—The prosecutors must therefore admit of the redeemability, or give up this charge—If the certificates were redeemable they must of course have been subscribable, because no certificates were redeemable that were not subscribable. I believe the accusers will find some difficulty in extricating themselves from this dilemma.

The crime imputed to the defendant by this article is, that of *recognising, certifying and declaring* the said certificates to be redeemable—To *recognise*, is to *acknowledge*, but what offence is it against law, for a man to *acknowledge* any thing? But suppose it to be an offence, for Mr. *Nicholson* to *recognise, certify and declare* this to some *proper officer*, yet to constitute the offence, the impeachment must state this to have been done to that officer; but it is not charged that he did it to any body, and of course no criminal charge is made against him by the first article—But if there is, yet there is no
evidence

evidence in support of it—The committee of impeachments knew, or might have known, that Mr. *Nicholson* did not certify in his *official* capacity;—they also knew, or they might have known, that he did not certify to *any officer* whatever, that the said certificates were subscribable—If they did know these things, it is really too bad, to charge it to have been done *under colour of his office*; and if they did not know these things, they were guilty of a culpable neglect of duty, when the means of information were at hand by enquiring of Mr. *Smith*.

These, Sir, are not objections to mere form, but they go to the very essence of the first article. If they are solid, that article is insufficient, and no weight of evidence could authorise a conviction;—or if it could, it will be found, that the evidence brought to support it, cannot possibly affect the defendant.

It appears in evidence, to be an *uniform practice* with Mr. *Nicholson*, to authenticate his *official* acts, by subscribing his name at length, where he transacted business with any other officers. It appears that in all the cases which this article states to have been done by him, *under colour of his office*, he did no more than write on the back of the New-Loan certificates, these words “*Genuine and assumable*,” with the initial letters of his name subscribed, and without adding the words “Comptroller-General’s office.” This sufficiently shews, that he did not consider these acts as being *official*, and it will next appear, that no body else considered them so.

But why, it is asked, did Mr. *Nicholson* certify at all, if it was not in his official capacity, and intended as an authentic document in the proper offices, to shew that the New-Loan certificates were subscribable to the loan of the United States? The gentlemen who have asked the question, have heard the evidence of young Mr. *Smith*, and cannot I am sure be at any loss for the proper answer. This young gentleman is the son of the late Commissioner of Loans, and his evidence is so clear and satisfactory, that if all prejudices, either in
favour

favour of or against Mr. *Nicholson*, are laid aside, as I trust they are, it will appear, that the evidence adduced, if any there is, against Mr. *Nicholson* under this charge, is no less insufficient, than the charge itself. He swears, that “it was thought for the benefit and safety of individuals, that, they should first apply to Mr. *Nicholson* for their certificates, lest they might be locked up until the end of the loan in 1793, when the Secretary of the Treasury was to decide, and if any should be rejected, as not being subscribable, the holders might have lain out of the interest in the mean time; and for this reason if they brought their certificates to the Commissioner, without being first shewn to Mr. *Nicholson*, they were sent to him for examination, although his certification was of no consequence to the Commissioner; the receipts given by him for the certificates being purposely so worded, as that the vouchers in the State offices might be examined at the end of the loan, and that from them he might learn whether the certificates were *genuine* and *assumable* or not;”—but he expressly declares, “That *his father took no notice of Mr. Nicholson’s certification, as to what respected himself.*”—We have here, Sir, a full and complete statement of this “*certifying, recognising and declaring*” by Mr. *Nicholson*, “*under colour of his office, and to promote and procure his own emolument,*” and I now ask, if ever a charge was more groundless! an imputation more scandalous! If the honourable accusers voted this article of impeachment without enquiring into its truth or falsity, *their criminality* is not less than *that* which they are pleased to impute to Mr. *Nicholson*! And if they voted it after enquiring, and knowing that it was not true, they have sinned in a still greater degree. In the one case, ignorance is no excuse; in the other, knowledge aggravates the crime. What can be more clear than that the Commissioner of Loans, neither wished for any information from Mr. *Nicholson*. nor relied upon that which he gave to the certificate holders? What can be more clear than that it was reserved
for

for the Secretary of the Treasury to determine, at the close of the loan, in the year 1793, whether the certificates were subscribable or not; and this too, not from Mr. *Nicholson's* certification, but from authentic documents in the proper offices? and that the Commissioner of Loans purposely gave his receipts accordingly? What can be more clear, than that the Commissioner of Loans sent the certificate holders to Mr. *Nicholson* for no other purpose, than that he, being an experienced and well informed person, should examine their certificates; lest at the close of the loan in the year 1793 they might sustain a loss by lying out of the interest in the mean time, if the certificates should then be rejected? *Nothing, I apprehend*; and yet for these manifold, but disinterested acts of *kindness* and *benificence*, flowing from a heart of benevolence, and a disposition to oblige, Mr. *Nicholson* is impeached for a *high crime and misdemeanor*! On the same principles might the charitable man, whose good deeds are recorded in *holy writ*, be impeached for helping the claud! directing the blind! comforting the widow! cherishing the fatherless! or relieving the beggar at his door! The motives of Mr. *Nicholson* appear to have been equally free from sordid views or private gain.

I have not approved of his politics, Sir, but his well known kindness and benevolence of disposition are virtues which command my respect, and I cannot but feel for the degraded honour of *Pennsylvania*, when I find these *amiable virtues converted into a crime*! If this has arisen from a disregard or culpable neglect of duty, by an omission of proper enquiry, it merits severe animadversion;—if from the more ignoble cause of answering party purposes, that animadversion should be limited by no restraint.

If Sir, the evidence of young Mr. *Smith* stood in need of support, which will not be alledged, it is afforded by the form of receipts constantly given by his late father, the former commissioner of loans—"RECEIVED FOR EXAMINATION." What form of words could have

been used to shew more clearly than these do, that Mr. *Nicholson's* certificate was not considered as an *official* act or regarded as such by Mr. *Smith*? *surely none.*

Again; That the Secretary of the Treasury, who at the close of the loan, was finally to decide on the subscribability of all certificates that might be offered, had no idea of taking the least notice of Mr. *Nicholson's* little memorandum, given for the satisfaction of individuals, appears from his letter of the 8th of June, 1791, to the Commissioner of loans. (See page 273) In it he says, "It will not be proper that you commit the examination, and checking of the certificates of the assumed debt, to any person, who does not actually belong to your office. It cannot be deemed a legal execution of your duty, to rely upon any person not duly authorised. You will receive these certificates, and give on the delivery of them to you, and before comparison with the checks, a descriptive receipt for them, which will amount to no more than an acknowledgment that such certificates are placed in your hands, with a view to the loan. The subscribers will be sensible, that the receipt cannot be deemed final, because the subscriptions may exceed the assumption, and the certificates may prove counterfeit or forged." After hearing this, will any man suppose that the Secretary of the Treasury, was so little mindful of the trust reposed in him, as to commit it to others, or to have a single thought about Mr. *Nicholson's* memorandum? After hearing the evidence of young Mr. *Smith*, will any man suppose, that his father did not act in exact conformity with those directions; or that the Comptroller-General, ever imagined, that he was doing any more than *obliging individuals in his private capacity?* and not *under colour of office and with a view to his own emolument, endeavouring to defraud the public?* That he did not act with a view to his own emolument, will if possible, appear still more clearly when we consider

1st. That he *did not in a single instance of his own, certify at all;*—and

2d. That

2d. That he certified *in like manner under the first loan, when no body subscribed the New-Loan certificates, because it was not their interest so to do.*

Hence I conclude that the first article contains no criminal charge, and if it did, yet that it is not supported by a shadow of evidence.

But, Mr. Speaker, I have strong grounds of defence against this article, still to bring forward, and which would be abundantly sufficient to ensure an acquittal, even if the first charge were admitted to be sufficient in point of law, and if it should be further admitted, that Mr. N. had in his *official* character, certified the New-Loan certificates to be subscribable, when they *were not so.*

The article under consideration charges that the defendant *recognised, certified and declared, &c.* corruptly, and illegally, "*as he the said John Nicholson well knew.*" His accusers knew this to be essential to the constituting of the offence, and it has been admitted that proof of it is equally essential.

Guilt can only flow from the corruptions of the heart, not from the errors or mistaken opinions of the head. The former are essential to guilt; the latter never constitute it where the intention is pure. It is incident to man to err, and therefore the law makes allowance for the frailty of human nature. The honorable accusers may in *some things* have mistaken the law, and this rule might perhaps be very applicable in their case. The learned judges upon the bench frequently differ in opinion—The most upright and the most enlightened officer of government may mistake the true construction of confused, clashing, contradictory and ill penned laws, which in the business of his office he may have occasion to act upon—If however he acts honestly and uprightly—if he acts according to what he really believes the law to be, he at most commits an error, not a crime. Did Mr. *Nicholson* then really believe the New-Loan debt to be subscribable to the loan of the United States? If he did, an acquittal must be the consequence, whether that opinion was *right or wrong.* We undertake

to prove, not only that he was of this opinion at the time of his certifying, &c. but that it was uniformly held and avowed by him from the commencement of the first loan in September 1790, up to the close of the subscription to the second loan in July 1792, and that it is not changed.

It has appeared in evidence, Sir, that on the 30th of April 1790 the Commissioner of Loans wrote a letter to Mr. *Nicholson*, desiring to be informed of the several kinds of State certificates then in circulation, as books were about to be opened for the receiving of subscriptions to the loan, and also desiring to be furnished with such checks as would enable him to do the business with safety to the United States (see page 271.) It is evident that Mr. *Smith*, made this application to Mr. *Nicholson*, as being the person most capable of furnishing the necessary information, and not as a person, who in his official capacity, was to give directions to be followed by Mr. *Smith*.

Mr. *Smith* says, "*Such checks as will enable me to do that business with safety to the United States.*"

And it has further appeared, that on the same day, Mr. *Nicholson* wrote to Mr. *Smith* in answer, "Until I can give you a complete check, have enclosed herewith a blank form of a depreciation certificate, and one of funded debt, the only two kinds receivable by you, under the funding law of the United States granted by this State, *as it is not presumable the New-Loans will be offered, subjected to the restrictions in that law prescribed*"—You will be able to check those left with you more particularly hereafter."

This letter fully proves, that he had no idea of the right of checking or determining on the assumability of the certificates himself, since he speaks in unequivocal terms, of that being done hereafter by others, and it also proves the opinion of Mr. *Nicholson* at that early period to have been, that the New-Loan debts were so far from being abolished by the Act of 1789, as that they were subscribable to the first loan of the United States; which

which differs not in this particular from the second one —It was not at that time the interest of the holders of New-Loan certificates to subscribe them, since *Pennsylvania* had not passed, nor was it known that she would pass the law for making up the loss on the three per cent. and deferred stock. Mr. *Nicholson* assigned this as his reason for not sending to Mr. *Smith*, the blank form of a New-Loan certificate, and he also assigned this as a reason for its “not being presumable that the New-Loans would be offered, subjected to the restrictions in the Act of Congress prescribed.”—This shews his opinion of the existence of the New-Loan debt notwithstanding the Act of 1789; it shews his opinion that, the New-Loan debt, though at that time *unfunded*, to be of greater value than an equal sum in six per cent. three per cent. and deferred stock would be; and from his thinking it *not presumable that the New-Loans would be offered, subjected to the restrictions prescribed*; and it is evident, that he believed other people judged of the existence of the New-Loan debt, and of its being subscribable, as he himself did:—If these were his sentiments, as they unquestionably were, he cannot, whether they were right or wrong, have committed any offence, by acting conformably to them.

But, say the gentlemen, “This was mere pretence, a copy of his countenance only, and intended to deceive.” But why mere pretence; why a copy of his countenance? Mr. *Nicholson* offered none of the New-Loans for subscription under the first loan, and therefore his conduct accorded with his language expressed in his letter, and this surely shews that he expressed his real sentiments—Nor could he possibly have any motive for deception—He could not possibly know in September 1790 that *another* Legislature would in the year 1791 make up the loss on the three per cent. and deferred stock; nor that the loan of the United States would be extended or again opened in the year 1791;—nor that *Pennsylvania* would in the year 1792 provide for the redemption at her Treasury of the New-Loan

Loan debt, which should at a future period be subscribed and transferred—And yet without his possessing the power of looking into futurity, and having a pre-science of all these things, there is no room for talking of a mere pretence in the year 1790, or supposing that he had any intention to deceive!

The gentlemen finding the opinion of Mr. *Nicholson*, at a time when he could have no inducement for disguising his real sentiments to be, that the New-Loan debt was not abolished by the Act of 1789, and that it was subscribable to the loan of the United States.—Exclaim what have we to do with his private opinions! If this exclamation has not received a sufficient answer already, it is certainly afforded by the first article, which charges, that the New-Loan debt was abolished and that it was not subscribable as *he the said John Nicholson well knew*; and yet when we prove that he was so far from knowing or believing this to be the case, that he was really of a contrary opinion they exclaim;—what have we to do with his opinions! If this answer will not satisfy the managers and the learned counsel, they themselves have afforded one, which they cannot, without the most palpable inconsistency now controvert. It must be fresh in the recollection of the honourable Senate, that it has been fully admitted, that if Mr. *Nicholson* has acted conformably to his opinion of the law, *he cannot be guilty, even though that opinion may be wrong*;—and yet, when we prove what his opinion really was and that he has acted in conformity with it, the same gentlemen exclaim;---what have we to do with his opinions!

But “out of the defendants own mouth,” says brother *Dexter* “shall he be condemned,” and he then produces, what he calls a condemnation, not from the defendants *mouth*, but from his *pen*. It is contained in a report, made in October 1790, (see page 389,) by the Comptroller-General, to the General Assembly, on the funds of the state, and the debts to be provided for. In that report he brings into view, *all the debts of the state,*

State, as well the *unfunded* as the funded ones ; as well those which were *redeemable* by the then laws, as those which had been excluded from redemption, and of course would not be redeemable, until they should be made so. He shews what funds were then provided, and what further ones would be necessary to defray the expences of government and discharge such debts as were *then* redeemable at the Treasury---In doing this, he makes a deduction of the old unfunded depreciation certificates, because they were not then *redeemable*, although they have since been made so, and also, of the remainder of the New-Loan debt, because that also was not *redeemable*. He of course did not propose providing funds for the payment of either of them ; and it would have appeared strange indeed if he had, since neither of them was at that time payable at all. To distinguish them however and to point out such as were then *redeemable*, and as it would require funds to be provided by the Legislature, he mentioned the situation of the old depreciation certificates, and he then mentioned the amount of the New-Loan debt remaining on hand, and “ *excluded from redemption by the Act of March 1789* ;” and these words we are told contain *his sentence of condemnation*. If they do, it is expressed in language which looks more like a decree of acquittal. The New-Loan debt had by the Act of 1786 been made *redeemable* at the Treasury and at the Land-office. By the Act of 1789 it was no *longer* redeemable at either of these offices, or at any other office, and of course was in the Comptroller-General’s own words, “ *excluded from redemption by the Act of March 1789*.” This being the case, no provision was then necessary for the payment of that, which was not then payable at all, and the defendant, therefore, with great propriety brought into one view, all the debts of the State, but at the same time, with equal propriety distinguished between their various situations.

His conduct upon this occasion therefore, instead of affording his condemnation, affords the most convincing

ing grounds for his acquittal, since the *bringing of the New-Loan debt into his report and ranking it among the debts of the State*, clearly shews, that he considered it as a still existing debt. If he did not; why would he have brought it into view at all, and been so particular as he was, in shewing by calculations the amount of it, which still remained on hand? Why should he, on any other principles than those which I have stated, have taken any more notice of it, than of any of the former debts of the State which had been abolished or discharged? Or if he considered this debt as abolished, why did he not say *abolished*, by the Act of 1789, instead of EXCLUDED FROM REDEMPTION by it?

The next piece of evidence to which I shall advert is, the letter of the 6th of June 1791, (page 272) from the Secretary of the Treasury to the Commissioner of Loans, in which he says, "*In consequence of an enquiry made of me, I think necessary to inform you, that I consider the holders of certificates, received from the government of any State, in lieu of certificates of the Federal debt, as having a right to subscribe those certificates to the loan of the assumed debt, and I consider the State, as having a right to subscribe the Continental certificates, which they have obtained by the exchange, to the loan proposed by the Act of the 4th of August 1790; but no interest is to be paid on the assumed debt of the State, either to the State, or to individuals, until you shall be informed that I am satisfied, that all the certificates so issued by the State, have been re-exchanged or redeemed, or that all those, which shall not be re-exchanged or redeemed, have been surrendered to the U. S.*—And in order, says he, "*to distinguish in a clear and striking manner, this description of N. L. certificates, from all others, I have determined to have a hole, of about one fifth of an inch, cut through a part, near the centre.*" He then directs, that when the stock represented in these certificates, should be transferred from and to the Loan-office or the Treasury, the transfer certificates should have this central hole, cut or punched through

through them in like manner." And he concludes with saying, that "in order to full information on this subject, I request you to transmit to me a copy, or sufficient extracts from any laws passed by the Legislature of the state in which you reside, relative to the exchanges of Federal certificates, for those of the state, and to *the re-exchange of those of the state for federal certificates*; in doing which, you will be careful to collect whatever there may be."

The words in the beginning of this letter, "*In consequence of an enquiry made of me,*" sufficiently shews, that Mr. Smith had applied to the Secretary of the Treasury for information, respecting the subscribability of the New-Loan debt, and it can hardly be presumed, that so industrious and well informed an officer, as the Secretary is, in all things relating to the duties of his office, was not at this time in possession of the Act of March 1789. That he was in possession of it, is more than probable, from what he says in this letter respecting the *re-exchange* of certificates—An *exchange* of certificates took place under the law of March 1786, but there could be no *re-exchange* of them, but under the Act of March 1789. The Secretary could not therefore have known, nor would he have talked of the *re-exchange* of certificates, had he not known of a law for that purpose; but he did speak of a *re-exchange*, and therefore he must have known of the law of 1789—But he went further, Sir, and ventured to act upon that law, for he tells the Commissioner of Loans that *no interest was to be paid* on the New-Loan certificates until he should be satisfied, that all of them had been *re-exchanged* or redeemed, or that all such as were not *re-exchanged* or redeemed, had been surrendered to the United States." and as they could only be surrendered to the United States, by being subscribed, these last words shew, *as clearly as he had before expressed himself in the same letter, that HE THOUGHT THEM SUBSCRIBABLE.*

But, Sir, in the latter part of this letter, he calls upon the Commissioner of Loans, to transmit to him,

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a copy,

a copy, or sufficient extracts, from all the laws of the State relative to the *exchange* of Federal certificates for those of the State, and to the *re-exchange* of those of the State, for Federal ones. This call would hardly have been made, had he not known that there was a law for *re-exchange*; which law he was probably possessed of, but as there might possibly be further laws on the same subject, containing alterations or amendments, he very prudently called for copies or extracts of *all laws relative thereto*.

If however it should be thought, that there is not sufficient proof of his knowing at this time, of the law of 1789, it must I think be admitted, that before writing his next letter, he had received it from the Commissioner of Loans—We find him by the last letter, calling upon that officer, for all laws on the subject;—*in order to full information thereon*. The great accuracy and unwearied attention of that officer, to whatever related to the duties of his office, are so well known, as to forbid the idea, of his not having shewn the most prompt compliance with this call from the head of the department.

On the 8th of the same month, the Secretary again wrote to the Commissioner as follows;—(page 274) “I do not consider you as justifiable, in refusing the certificates of the State of *Pennsylvania*, which are in all other respects assumable, because they have been received of the State, in lieu of Continental certificates. It will not however be improper, to use your endeavours, to persuade the holders to exchange them, but you cannot, if they persist to offer, refuse to receive them.” In addition to the reasons already given for believing, that the Commissioner as early as possible furnished the laws which had been called for, permit me to remark, that after Secretary *Hamilton*, had called for all the laws, &c. “in order to full information on the subject,” the supposition, that he decided in the very positive manner, which appears from this letter, without having received the law, and all the necessary information

information for forming a decision, is too improbable, to be admissible. That Mr. *Smith* had written or sent to Col. *Hamilton* in answer to the first of these letters, before the second was written, appears from a clause in the letter, approving of Mr. *Smith's* proposal, of stamping the certificates, instead of *punching a hole near the centre*, as Col. *Hamilton* had proposed. If so, can it be imagined, that the laws which had been called for, did not accompany the message? or that, as the opinion now given, does not vary from the former one, it was not given on the same law?

But we are told that "These letters were not directed to the defendant, and as it is not in proof that he knew of them, they furnish him with no apology." By the death of Mr. *Smith* we are deprived of his evidence, or this objection would not have been made.—It may nevertheless be answered.

1st. That the habits of intimacy, which prevailed between the Comptroller-General of *Pennsylvania* and the Commissioner of Loans of the United States, as well as their daily intercourse in business, between *Pennsylvania* and the U. S. and which in a great degree related to certificates of various kinds, furnish strong proof of the defendant's knowledge of these letters;—or,

2d. If they do not; yet, by proving that the defendant was not singular in his opinion, but that many other well informed persons were of the same opinion, we have no room for a criminal intention being imputed to him—That this was really the case, I shall find no difficulty in establishing.

The Secretary of the T. it is true, tells us, that he cannot now say, whether at the time of writing these letters he did or did not know of the Act of 1789; but as he also tells us, that he has not an accurate recollection of what passed in the early stages of the business, his want of recollection does not weaken the force of the observations intended to shew, that he must have then known of that Act. Or if he did not then know of it, yet if there is sufficient reason for believing, that Mr. *N.* knew of these

these letters, without knowing that they had been written, without a knowledge of that law, the case is not altered.

I believe, Sir, that I omitted to answer in its proper place, an objection which has been made; "That if in June 1791, the Secretary of the Treasury did know of the Act of 1789, yet that the question did not present itself to him, in "a prominent point of view."—This I can readily believe, since I can hardly conceive, that he saw much difficulty arising from it; or if he did, how could the defendant, or any body else know, of the degree of *prominency*, in which the question had presented itself to the Secretary, but from his letters, in which he expressed himself with great clearness and decision?

It is seriously contended, Sir, "That the defendant, in *violation of his duty*, and in *violation of his oath*, neglected to inform Col. *Hamilton* of the Act of March 1789."

If this were the case, let the defendant, *for the sake of justice*, be impeached for this offence, before he is condemned! The objection however proves one thing, and that is, that no arguments are too desperate and groundless to be made use of, in order to affect the defendant's destruction! Will those who make use of this argument, venture to tell us, that it was the official duty of the Comptroller-General; *an officer of Pennsylvania*, to inform the Secretary of the Treasury; *an officer of the United States, of the laws of Pennsylvania!* or that the defendant, *had ever taken an oath to do so!*—If not, will they have so much of the hardihood of veterans as to gravely contend, that a man can violate a duty, *which never existed*;—or an oath, which *was never taken!*

Although it was not incumbent on *any officer of Pennsylvania*, at least when not called upon, to give *any* information in this particular, to *any officer of the U. S.* it will presently appear, that in this respect, the defendant was no less candid and obliging, than he had been to individuals, by examining their New-Loan certificates,

certificates, before their subscription was offered to the loan of the United States.

It is further objected "That if the Secretary of the Treasury was once of the opinion, that the New-Loan certificates were subscribable to the loan of the United States, yet that he afterwards altered his mind."—I shall in the sequel have occasion to examine into the truth of this objection, and I will therefore only observe at present, that were this the case, it militates naught against the defendant, who could not possibly know, that such a change would ever take place.

By answering these objections, I have in some measure been diverted from my regular chain of observation, intended to shew, that the defendant really believed, and that many others, most likely to know, also believed, the New-Loan certificates to be subscribable to the loan of the United States; and of course, that no criminality is fairly imputable to him, even if that opinion were wrong. This chain of argument shall now be resumed; and in tracing it I hope to prove, that Mr. Nicholson's opinion was as already mentioned, upon all occasions candidly, openly and uniformly avowed; that it was recognised by others, whose acquiescence or explicit approbation confirmed him in it, and that if there has been any omission, in not giving the necessary information to the Secretary of the Treasury, it is not imputable to the defendant, but to a man much higher in office.

It is in evidence, that on the 27th of June, 1791, the Secretary of the Treasury wrote to the Governor, (page 275-6) that "The United States had directed, that the payment of interest should be suspended, in respect to the debt of any state, which might have issued its own certificates for those of the United States, until it should appear to the satisfaction of the Secretary of the Treasury, that certificates issued for that purpose by such state, had been *re-exchanged* or redeemed, or until those which should not have been *re-exchanged* or redeemed, should be *surrendered to the United States*,
and

and requesting his attention to the subject ;” concluding by saying, that “ It would give certainty to the operations of the Treasury, and might prevent delays inconvenient to the public creditors, if the Governor would direct the proper officers, to cause the state of the fact as it regarded *Pennsylvania*, to be made appear to the Secretary.”—This is the first call that appears to have been made by the Secretary of the Treasury, upon any officer of *Pennsylvania*, for information respecting the state of her New-Loan certificates, and if the Governor believed, that such of them as had not been *re-exchanged* were abolished by the Act of 1789, he had nothing to do, but *at once to say so*, to the Secretary of the Treasury, unless by his high office, he was exempt from an obligation, to be acquainted with those laws which he was sworn to execute. In this letter, the Secretary of the Treasury, speaks of the New-Loan certificates, as being evidence of a debt of *Pennsylvania*, which might be surrendered to the United States, or in other words, subscribed to their loan, and if the Governor thought the debt was abolished, he had nothing to do but to say so. Did the Governor at all contradict this idea, so clearly expressed by the Secretary of the Treasury ? certainly not ; but rather gave countenance to it, as appears by a letter written on the 1st of July, in the same year, by Mr. *Dallas* to the defendant (page 276)—“ It is written,” says Mr. *Dallas*, “ In obedience to instructions from the Governor,”—a “ Copy of the letter from the Secretary of the Treasury was transmitted with it,” and it requested, that the defendant would “ with all convenient speed, make a report upon the subject to the Governor, accompanied with such statements as he should deem necessary, to satisfy the enquiry of the Secretary of the Treasury, and the object of the law to which he referred.”

In this letter, Sir, there is not a single expression, which could possibly lead the defendant, to doubt of the propriety of his own opinion, but on the contrary, it came from the highest source, and was, with that
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from the Secretary of the Treasury, calculated to confirm him in it—It contained no directions to send the law of 1789 to the Secretary of the T. or to inform him, that by that law the New-Loan debt was abolished. On the contrary, as the Secretary's letter admitted the New-Loan debt to be subscribable, and as that written by Mr. *Dallas* in obedience to the Governor's direction, was so far from contradicting this idea, as to desire a report, as to what part of the New-Loan debt had not *been re-exchanged*, and might therefore be surrendered to the United States, it was surely confirmatory of the defendant's opinion. What did the defendant do in consequence of these two letters? why he on the next day reported to the Governor, that he had "Through the Secretary of the commonwealth, received a copy of a letter from the Secretary of the Treasury, on the subject of certificates of state debt, issued in lieu of Continental ones, and relative to the assumption thereof;" and the report then proceeds as follows, "As the regulations and provisions of this state, enable *such creditors* to re-possess themselves of continental certificates, received for them by the United States, I apprehend, the *case of such certificates of Pennsylvania are fully provided for*. However, if the Secretary of the Treasury wishes to be informed of the quantity issued by *Pennsylvania*, and now out, of this kind, and your excellency *should chuse to lay the same before him*, I beg leave to represent, that the whole quantity so issued was 5,167,695 $\frac{33}{99}$ dollars, of which 316,864 $\frac{30}{99}$ were redeemed by the state, and upwards of two thirds of the remainder have been returned in exchange for the Continental certificates, and that the *residuary sum is diminishing daily by further applications and exchanges*." Here we find the defendant in his report made in his *official capacity* to the Governor, declaring in the most explicit terms, as he had before done, that the New-Loan debt still existed, as a debt of the commonwealth. The Secretary of the Treasury, had endeavoured to call the attention of the Governor to the subject; *admit-*

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ting at the same time, that the New-Loan debt was subscribable to the loan of the United States, and also defining that he "would direct the proper officers to cause the state of the facts mentioned in his letter to be made appear to the Secretary." This the defendant did in his *official capacity*, in such clear and pointed language, that the Governor could not possibly misunderstand his meaning. At the same time he expressed his reason for being so particular to be, least "the Governor *should chuse to lay the same before the Secretary of the Treasury*. Whether this report was or was not communicated to the Secretary of the Treasury, does not I believe appear. If it was not, the *violation of duty and of oath*, which has been mentioned, is not imputable to the defendant, since he was not called upon by the Secretary of the Treasury, and if he had, the call would have been improper. The Secretary called upon the Governor; *he* called upon the Comptroller-General, and the Comptroller-General immediately answered that call in so particular a manner as to give the fullest information. This was the proper channel in which the business ought to be conducted; the Comptroller-General when called upon by his superior, paid obedience to that call, and if his answer was not made known by *that* superior, to the Secretary of the Treasury, upon whom ought this heavy charge to fall? If upon either, certainly not upon the defendant. This evidence, Sir, must not only acquit the defendant of the imputed charge of "*a violation of his duty and of his oath*," but it must do much more;—The Secretary of the Treasury had in his letter to the Governor, taken it for granted that the New-Loan debt still existed, and was subscribable, to the loan of the United States—the Governor had acquiesced in this opinion by not controverting it; the Comptroller-General had, in his report to the Governor openly avowed it; this avowal did not meet with the Governor's disavowal, and as one of the managers tells us, that the Governor is an *extremely attentive and vigilant officer*, the defendant had surely reason to suppose,

suppose, that he was not guilty of so *extraordinary a neglect*, as not to communicate to the Secretary of the Treasury, that report which had been called for, and which in consequence of that call, the defendant had sent to the Governor. The defendant had therefore every reason for supposing, that the Governor also thought, that the New-Loan debt still existed and was subscribable. If he was of that opinion, the defendant is guilty of no other offence, than that of being of the same opinion; and if the Governor thought otherwise, but remained silent, and without expressing any disapprobation, either to the defendant, or to the Secretary of the Treasury, the fault should rest with him, *attentive and vigilant as he is*. Be this as it may, the Comptroller-General had every reason for supposing, that his opinion was confirmed by that of the Governor, as well as by that of the Secretary of the Treasury, and there is surely no room to suppose, that the *former* was ignorant of the law of 1789, since at the time of that law being passed, he filled an important station in the councils of *Pennsylvania*.—In observing, Sir, upon the report of the Comptroller-General, I ought to have observed, that when speaking of the holders of New-Loan certificates, he makes use of these words, “*such creditors*,” and the “*case of such certificates of Pennsylvania*,” and I do it now that the learned and ingenious gentleman who is to follow me, may have an opportunity of explaining to us, how it is possible, that they could be *creditors*, in the opinion of the defendant, if he thought, *their claims were abolished, or the debt annihilated!*

From ought that appears, matters remained, I think, in this situation, till the 21st of December following when the Secretary of the Treasury, again wrote to the Governor (page 102) as follows—“It appearing to me, that the attention of the Legislature of *Pennsylvania*, may be necessary to the removal of an inconvenience, under which the subscribers of the debt of the state now lie, I do myself the honor to make the requisite communication to your excellency.

The 18th section of the Act, making provision for the debt of the United States, suspends the payment of interest, in respect to the debt of any state, which shall have issued its own certificates, in exchange for those of the United States, until it shall be made to appear, that the certificates issued for that purpose by such states, have been *re-exchanged* or redeemed, or until those which shall not have been re-exchanged or redeemed, shall be surrendered to the United States.

It is understood that the measure contemplated in this section, was adopted by *Pennsylvania*; that is, that a sum of state certificates, was issued in exchange for an equal sum of certificates of the federal debt, and that although a part of those certificates has been redeemed, others to a considerable amount have not been re-exchanged or redeemed; it will therefore conduce, as well to the order of the finances, as to the convenience of the public creditors, *the payment of interest to whom must otherwise be suspended*, if measures can be taken by the government of *Pennsylvania*, to make *the balance unredeemed and unexchanged to appear*, and if they should *direct the surrender of the amount of such balance* in certificates of federal debt in their old form." This letter relates to the *New-Loan debt*, and to nothing else. It goes on a supposition, most clearly expressed, that that debt not only existed as a debt against *Pennsylvania*, but was subscribable to the loan of the United States, and from the whole complexion of it, nothing can be more clear, than that the Governor had so far agreed in opinion with the Comptroller-General, in his report of July in the same year, as to have never taken any pains to convince the Secretary to the contrary—I say *the Governor so far agreed in opinion*; for as the Secretary had in his letter to the Governor of the 27th of June, stated the difficulty, arising from part of the New-Loan debt, being neither redeemed nor re-exchanged, and had at the same time informed him, that, *interest must be suspended, in respect to the debt of any state*, which had issued its own securities for Continental ones, until it should

should appear, that the New-Loan certificates had been re-exchanged or redeemed, or until they should be surrendered to the United States, I cannot suppose, that the Governor was *so regardless of his duty*, in a case *so interesting to Pennsylvania and to her citizens*, as to have neglected the business during all this time—and yet we are compelled, either to admit *this to be the case*, or to conclude, that he was of the *same opinion with the defendant*—be this as it may, the defendant certainly had every reason for thinking so, since he could not impute the Governor's delay and silence to any other cause—It appears by this letter, that the Secretary considered the subject so interesting to *Pennsylvania*, as to be worthy of the attention of the Legislature—yet it *could not be interesting at all, nor worthy of the least attention, if the debt was abolished*. Had the Governor considered this to be the case, he might with almost *a single dash of his pen* have told the Secretary so; and might have added, that since this was the case, *the difficulties which you suggest cannot possibly arise*, nor can the attention of the Legislature, *be at all necessary*—or if he had even doubted, he would, as in other cases, have consulted the Attorney-General, who is the proper law officer, and not the defendant *on a question of law!*

Instead of doing either of these things, he on the 23d of December, ordered Mr. Dallas (page 220) to send to the defendant the letter from the Secretary of the Treasury, with a request, that he would, “as soon as possible, make a full report to the Governor, *on the subject to which it referred*.”—What was the subject to which it referred? suerely not the law question of the New-Loan debt being abolished or not, for that question would have been submitted to the proper law officer. On the contrary, the letter of the Secretary of the Treasury, went on the supposition, of *that* debt being not only in existence, but subscribable to the loan of the United States; but it stated certain difficulties, arising from its subscription in its then situation, and it suggested certain modes to be pursued, in order to obviate them.—

them.—These were the *subjects* and the only *subject* to which it *referred*, and it was therefore upon *these* and upon *these only*, that the Governor wished, *as soon as possible, to have a full report.* Upon *these things no report at all could possibly be necessary, if the debt was abolished*—I am therefore warranted in saying, that if from the creation of the world to the present day, a combination of circumstances ever occurred, in the whole course of human events, sufficient to demonstrate, the acquiescence of one man in the opinion of another, it is afforded upon the present occasion!

On the next day, the 24th of December 1791, the Comptroller-General made his report to the Governor (page 220) in which he says “The whole of the certificates of this State, granted for a like sum of certificates of the U. S. amounts to £. 1,937,885 15 3

Of which there was redeemed -	118,470	6	6
Balance - - -	1,819,415	8	9
	1,937,885	15	3

“By an Act passed in March 1789, the holders of this balance are entitled, on presenting their certificates and liquidating the interest received thereon, to *receive back their former ones, or an equivalent*; this hath taken place to a great amount, insomuch, that there does not at present remain, much unexchanged on a comparison of the whole, the exact amount at present unexchanged I cannot tell, a number of exchanges to the amount of 40 or 50 presented, are pending for want of the parties paying the indents due, the remainder I estimate from 40 to 50 thousand pounds, if absolute precision be necessary, I will have the additions and selections made, so as to give the sum exactly,

“When I read the letter of the Secretary of the Treasury, I was doubtful, until I consulted it again, whether it really imported, that the interest payable quarterly, on the certificates granted on the assumed debt

debt of this State, would be suspended, until the certificates of the Federal debt, not yet exchanged, for the New-Loans as aforesaid, should be surrendered, or an equivalent in stock under the funding system, as such a case *would prostrate the faith of the U. S.* to the will of the Legislature of this state, if they should refuse to surrender them, then the U. S. without any fault on the part of the original subscribers, or the present holders, would not pay the interest they had issued their obligation for, in which they promised payment. It appeared to me, that if such were the law, *the public credit of the U. S. might be shaken by it*, and rendered precarious, but on turning to the law it will appear, that the provision for returning the certificates of the U. S. was to prevent the U. S. from *paying the interest twice on the same debt*, and that in conformity thereto, if any of the New-Loan certificates of this State, had been before the 1st of October last, when the loan closed, subscribed to the said loan, it would have been requisite, before the stock had issued therefor, that an equal sum should have been surrendered by the State as aforesaid. *The State would thus have redeemed her certificates, through the U. S. in the same manner at present practised for individuals.* But no such certificates of this State were subscribed.—Consequently the U. S. are entitled to none of the Continental certificates, which *are demandable by the persons holding the New-Loans.* If they should be delivered to the U. S. *this State might have to pay the New-Loan certificates*, without having this resource to do it with. I think too highly of the faith of the public to suppose, that *the holders of New-Loans are compellable either to subscribe them to the U. S. or to re-exchange them for the Continental certificates, or that to such as do not, the State is absolved from payment both of principal and interest*, but the market value, and the irredeemable quality of the Continental stock, and the present funds of the U. S. are generally sufficient to induce the change as is evinced from the great quantity already so exchanged. Of the remainder

remainder *some part is exchanged almost every day*, and if the loan should be opened by Congress, the exchanges *would be increased thereby*." Every part of this letter is so material to prove, the opinion of the Comptroller-General, that the New-Loan debt was in existence and subscribable to the loan of the U. S. that had I not read it, I should have been under the necessity, of endeavouring to draw the attention of the honorable Senate to its various parts, by observing upon them at large, but this will now be unnecessary, since no arguments can place these truths in a stronger point of light than the letter itself does. If it were possible, as it certainly was not, for the Governor to have misapprehended the defendant before, it cannot be alledged, that he could do it now—This report was made near three months after the first loan was closed; it was made more than five months before the law for opening of the second loan was passed; it was made more than three months before the law for the redemption at the Treasury of *Pennsylvania* was enacted, and it is therefore impossible for even credulity itself to imagine, that it does not express the defendant's real opinion.

What is it natural to suppose, the conduct of the Governor on receiving this report would have been, if he was not clearly satisfied that the defendant's opinion was right? Why he would, have put an end to the business, by telling both the defendant, and the Secretary of the Treasury, that the *New-Loan debt was abolished*, by the Act of 1789, but instead of this, he transmitted to the Secretary of the Treasury, "That part of the report, which stated the amount of the New-Loan certificates issued, and redeemed, and the probable balance of the unexchanged certificates." (Page 277.) Why do this, if he thought *that* balance no longer a debt? Or why keep back the rest of the report, if he thought it at all questionable, whether *that* balance was a debt or not? Surely no other reason can be assigned for either than that he had no doubt of the

the existence of the debt. That he really did think so, appears from his "giving instructions to the defendant on the 27th of the same month (page 277) to confer with the Secretary of the Treasury, in hopes that the difficulty suggested might be removed, without claiming the interposition of the Legislature." The difficulty suggested arose from the danger of interest being twice payable by the U. S. that is to say, once on the New-Loan certificates, *which could not be, if they were abolished*, and also on the Continental certificates, which the State had received in exchange for them; the Secretary of the Treasury had suggested different modes of obviating that difficulty, and he thought it worthy of the attention of the Legislature. The Governor knew, that if the *New-Loan debt did not exist, the difficulty suggested could not exist*, and therefore, by instructing the defendant to confer with the Secretary of the Treasury, in hopes that *that* difficulty might be removed, he certainly expressed the same opinion, to the defendant, which the defendant had expressed to him.

In compliance with those instructions from the Governor, the defendant, on the 29th of the same month, wrote to the Secretary of the Treasury, proposing a conference with him on the subject contained in his letter to the Governor. A conference took place, and the defendant in a letter to the Governor of February 29th, 1792, after informing him that all obstacles were removed, expressed himself as follows;—(page 223) "The subject was an important one, and to have required the Continental certificates from *Pennsylvania*, while the New-Loans for which they were given, *were out*, and the State *responsible for*, without these means of redemption, would have placed her in an unpleasant situation. To take off the appearance of this hardship, it was suggested that in case the New-Loans, not exchanged, would *not be subscribed to the loan of the U. S. by the holders, which on the proposed terms of the loan might be done*, yet still, that the State would by the terms of the same loan, be in the receipt of a sufficient sum

sum from the Union, to meet the *interest due to these creditors*. But to this it was objected, that this receipt of interest by the State, would be temporary, and would cease when the settlement of our accounts with the U. S. should be effected, and the balances provided for, agreeably to law, whereas the demand against the State *would be perpetual, and could only be discharged by payment of the debt.*"

This letter, like several of the communications on which I have last observed, was written *after the first loan was closed, and long before the law for opening of the second one was passed*. The defendant could have no motives for deception, and it therefore affords the most conclusive evidence, that it contains his real opinion.

We have been told, Sir, that if this were the defendant's real opinion, he ought to have made it known to the Governor; that he concealed it from him, when it ought to have been communicated, and that he is therefore *at all events* criminal. If I were to make the extraordinary admission, that it is the duty of every officer of government, to tell the Governor his opinion, on *all* the laws of the State, and that *every* one who does not, is guilty of a criminal neglect! Yet, after this piece of evidence and several others which preceded it, the objection, though *strongly urged* by several gentlemen, would be *unworthy of a serious refutation*.

Here then, Sir, we have the fullest evidence, of an opinion, uniformly held and openly avowed by the defendant, on all occasions, in his public and private capacity, from the commencement of the business, up to the period at which I have arrived; and at times too, when it was impossible for him to be interested either way, or to have the least inducement to express sentiments which were not his own. We find this opinion, not only acquiesced in by the Commissioner of Loans, but we find him during all this period, countenanced and confirmed in it by repeated acts, both of the Secretary

cretary of the Treasury and the Governor of the commonwealth.

I will now go further and shew, that he not only continued to be of the same opinion, but that he was candid, open, and even *assiduous* in making it known to the Governor, and to the members of both branches of the Legislature, while the law of April 1792, for the redemption of the state debts was under consideration. In doing this, I shall also shew, that his opinion was not discountenanced by any of them, that it was countenanced by many if not by all of them, and that he had not the least hint from any body of his being wrong, until the transactions had taken place, which gave rise to the present prosecution. If I do this, I may add, that it is almost a crime, to impute criminality to him.

The law for the redemption of the state debts, as has already been shewn, was passed on the 10th of April 1792. While the bill for that purpose was depending before the House, the defendant drew up a proposed plan of finance. It enumerated the various debts of the state, proper and necessary to be redeemed, and among others we find the New-Loan debt, placed in a conspicuous point of view. It is entitled "A Plan for modifying the present debt of *Pennsylvania*," and the 8th enumerated debt (page 280 and 284) is spoken of in the following words,

"*The New-Loan certificates and arrearages of interest, about, say* - - - £. 20,000

It is proposed that these certificates should be received, with the arrears of their interest, on the same terms as the other preceding debts of the state. The holders nevertheless to be continued in the privilege of exchanging them as at present. But it would seem proper, that after due notice, so as not to extend to the period of the next loan by Congress, a limitation should by law be put to such power of exchanging, that hereafter, the Continental certificates should be subscribed for the use of the state, and that the state, having pro-

vided for the redemption of such as might remain unexchanged, unsubscribed to the loan herein proposed, or *unsubscribed to the assumption of the state debts*, should declare, that interest should thenceforth cease thereon, unless payment were demanded. No sum is extended in this case, as the Continental certificates will be in the possession of the state, to be appropriated to this debt, as far the same may be subscribed as herein proposed."—That this proposed plan of finance was laid before the Governor, appears by a letter to the defendant from Mr. *Dallas* of the 21st of March 1792, (page 286) in which, after mentioning the plan, he says; "The Governor has considered the subject, and will probably determine to-morrow, how far it would be proper, to transmit the plan to the Legislature." At this time another plan of finance was before the House, it was so far advanced, and so nearly matured, and the end of the session was so near at hand, as to account for no interference, for we do not find that any took place, on the part of the Governor; but however this may be, it certainly appears, that at this important crisis, the defendant *again avowed* the opinion, which he had uniformly held, and the propriety of which the Governor did not upon this, any more than upon any former occasion, think proper to controvert.—Mr. *Dallas* indeed tells us, that he never had an idea, or heard an idea, for I do not recollect which was his expression, of the New-Loan debt being subscribable to the loan of the United States, until June 1792, when he learned that it had been subscribed by the defendant. This may be true for ought that I know, and yet if he had any ideas at all I can hardly conceive it possible, since it has appeared, that he was privy to the correspondence between the defendant, the Governor and the Secretary of the Treasury, in which this opinion was clearly expressed and openly avowed without the least contradiction. He wrote and he transmitted to the defendant the Governor's directions on that subject; accompanying the letters of Secretary *Hamilton*, and I suppose

suppose him to have had the copying, and recording of all the correspondence on that occasion—If other proof be necessary, it is amply afforded by his letter to the defendant of the 21st March 1792 (page 286) in which he says, “I find from consulting Mr. Gallatin, and several other gentlemen, that your plan would not at this time, meet with any chance of success, *though its principles appear to me to be good.*”

If Mr. Dallas, in whose hands this plan of finance was, never read it, how could “its principles appear to him to be good !” If he did read it, how is it possible, that until he heard of the New-Loan debt being subscribed by the defendant in June 1792, he never had an idea, or heard of an idea of its being subscribable ! This is not however worth dwelling upon, and I shall therefore proceed to what is much more material.—It is in evidence Sir, that copies of this plan of finance were, at about the same time communicated to several active and intelligent members of each branch of the Legislature. The evidence has been heard, and I will not waste time in an useless enumeration of a long string of names, but I must remark, that not *one* of them, ever signified the smallest *disapprobation of that part of it, which proposed a provision for the redemption of the New-Loan debt.* Hence the conclusion was warrantable on the part of Mr. Nicholson, that *they too*, as well as the Governor, had no doubt of the existence of the New-Loan debt, and of the obligation of the State to redeem it.

I am now arrived Sir, at a most important stage of the business ;—At the time when the bill for the redemption law, as it is called, was pending before the House, and we find at this time the defendant declaring to each branch of the Legislature as he had upon all former occasions done, the existence of the New-Loan debt, that it ought to be redeemed, and so far are we from finding any disapprobation of this sentiment, from any one of them, that we find it *acquiesced in by all, and condemned by none.*

T heir

Their evidence is before you, Sir, and without spending time in repeating it, permit me to remind the honorable Senate, that it is as full as evidence can possibly be, not only to shew the real opinion of the defendant, but the pains taken by him to make that opinion fully known, and that wherever it was known it was approved of, since we do not find it contradicted by any one of those, whose peculiar province it was to do so, if its propriety was at all questioned.—Nay the honorable Mr. *Thomas* of the Senate tells us, that Mr. *Nicholson* in a conversation with him, objected to the plan of finance then before the House, because it would injure the commonwealth, by opening a door for speculation at her expence, and we find him at the same time offering another which was so plain; so simple and so easy to be understood, as to preclude every thing of this kind.—Was this also cant and hypocrisy too? was it also a mere copy of his countenance, and intended to deceive, when it is well known, that the law for extending the loan, did not pass until the 8th of May following! And yet Sir, the defendant is again charged with secrecy and covert views! But upon what grounds is he so charged? why say the gentlemen; we do not know what deep designs of speculation, at the expence of the public, were concealed under this plan of finance!” And if after so many months of laborious industry, they have not been able to find them out, will they seriously say, that the honorable Senate are to presume them, and on presumption only, without either a charge, or evidence, to condemn the defendant! Forbid it virtue! forbid it justice! forbid it patriotism! or to include them all, forbid it law!

But say Mr. *Nicholson's* accusers; “he never thought of the New-Loan debt being subscribable, until after the passing of the redemption law of the 10th of April 1792.”

Need I after all which has been shewn, answer this objection? Certainly not; unless it be to observe, that of itself, *if true*, it does away all his former *imputed* sins and

and iniquities, since in that case every thing which had been imputed to him before, must be groundless.

Again, Sir, we are told, "That while the bill for the redemption law of April 1792 was depending before the Legislature, Mr. *Nicholson* satisfied himself with mentioning *little, trifling objections*, but that he never told any body that the New-Loan debt would be redeemable under it."—To this I could, were it necessary, give many answers; but I shall satisfy myself with observing,

1st. That had he made no objections whatever, he would not have been liable to impeachment on that account, any more than those who state this objection are, and that if this is a criminal omission, *they* are no less liable to punishment for it, than he is, since they were under no less obligation than he was.

2d. That at the time of the objections, which are now called trifling, being made by the defendant, a report of a committee (see Journals of Congress of the 2d April 1792) was under consideration, which if it had been adopted by Congress, would have rendered the old unfunded bills of credit subscribable to the loan of the United States. When the bill for the redemption law was before the House, the defendant very properly objected, that should that report be adopted in its full extent, and should the bill then pass in its then form, these bills would be redeemable at the Treasury of *Pennsylvania*. However trifling this objection may now be thought, it was considered as of so much weight at that time, that this part of the report was rejected, and if it had not, the law of April 1792 was so framed as in its then form to admit of their redemption. And,

3d. That if the defendant did not state as an objection to the proposed law of April 1792, that the New-Loan debt would be redeemable under it, it was because he then did, and always had believed in the existence of that debt; because his own plan of finance proposed its redemption;—because he had every reason for believing that the Governor and each branch of the

Legislature

Legislature thought as he did in this respect; and that therefore, it would have been madness in the extreme for him, to object to what he himself proposed in his own plan of finance, and which he not only highly approved of, but had every reason for supposing to be equally approved of by others.

I will not, Sir, attempt any further answer to this objection, lest in combating such ground, I may be led into an intemperate warmth,

It is said, Sir, that "The Governor could not have been of the opinion, that the New-Loan debt was redeemable at the Treasury of *Pennsylvania*, or that it existed at all, since in none of his addresses to the Legislature, one or more of which have been read, has he mentioned this debt to be provided for, although he has particularly enumerated all that were to be provided for." This argument, though much relied on, will be found to be altogether fallacious. The New-Loan debt was not redeemable at all, until the passing of the redemption law of the 10th of April 1792, nor then, unless the loan of the United States should be again opened—It was not again opened until the 8th of May 1792, and of course no provision for its redemption, could be required before that time. The addresses which have been read, were all anterior to this period—Their object was to enumerate the amount of the *debts which were redeemable*, and of course demandable at the Treasury, and to call upon the Legislature, to *furnish the necessary means*; but as the New-Loan debt was not *then redeemable nor demandable*, at the Treasury, it would have been strange indeed, if our *vigilant* Governor, had so far forgotten himself, as to call for *means to be provided, for redeeming a debt, which at that time was not redeemable at all!*

Of a similar nature is another objection which has been made; "That in no instance have the committee of ways and means proposed any provision for the redemption of the New-Loan debt," from which it is inferred, that it had been abolished, or if not abolished,

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ed; that it was not redeemable." To this the answer must certainly be satisfactory, that the reports of this committee were, like the addresses of the Governor, made *before the New-Loan debt was redeemable*, and of course the proposing of *ways and means* for its *redemption* would have been folly in the extreme—It is the business of that committee, as appears from its very name, to propose *ways and means*, for discharging such debts as are *redeemable*, but it would be a great departure from its duty, to propose a law for any other purpose, unless under a particular reference from the House. It is the business of that committee, to find out *ways and ways for the redemption of funded debts*, not *unfunded ones*!

Equally unsubstantial is another objection, which has been made; namely, "That the defendant could not believe the New-Loan debt to be redeemable, because his own statement, made at, or soon after the passing of the Act of the 10th of April 1792, mentioned so small a sum, as a proposed estimate, of what would be necessary for the redemption of the public debts, as shews that it was not intended to provide for the discharge of the New-Loan debts." *Nor was it*; and this I freely admit, without allowing that there is any weight in the objection. These estimates bear date the 28th and 30th of April 1792 (page 224-5) and mention a "sum estimated to be necessary for the redemption of the State debt, according to law." But the New-Loan debt was not redeemable until the 8th of May following, when the Act of Congress for opening the second loan was past, and therefore, when these estimates were made, the New-Loan debt was not payable "*according to law*," nor would it ever have been payable under the then existing laws, had that loan not again been opened. If this is not a complete answer to the objection, I hope the following one will be—It will be remembered that the second section of the Act of the 10th of April 1792 provided for the payment of certain debts therein enumerated, and we have admitted that the New-Loan debt was not one of them, although it
was,

was, as we say, within the provision of the sixth section and eventually became payable under the 12th appropriation of the Act of April 1791. The 2d section of the Act of April 1792 provided funds for the debts enumerated in that section, and in order thereto, it enabled "The Comptroller-General and Register-General, under the direction of the Governor, to sell so much of the three *per cent.* stock as should be necessary to pay and redeem the debt in that section mentioned." On the 13th of April 1792 (page 232) Mr. *Dallas* by order of the Governor, wrote to the Comptroller-General and Register-General as follows—"The Legislature contemplates the payment of *certain* debts on *the first of July next*, by the sale of *three per cent. stock*, at a certain rate, with a power however, to suspend the sale until the stipulated price can be obtained, you will be pleased therefore, to take that Act into immediate consideration, and report what arrangements will be necessary in your opinion, for carrying the redemption of the debt into effect."

The three *per cent.* stock was not directed to be sold for the payment of the New-Loan debt, nor was provision made for the payment of that debt *on the first of July next, nor at all*, unless the loan should be again opened; the Governor could only call for an estimate of what would be necessary to discharge the debts, which were payable on the first of July; the estimate furnished was confined to that object, and could not be extended to any other; the three *per cent.* stock could not be sold to satisfy any other object. When gentlemen are driven to such objections as this, their situation must be desperate indeed!

Oh! but say the gentlemen, "The defendant did not inform Mr. *Gallatin* as he ought to have done, that the New-Loan debt was redeemable under the Act of April 1792." If I admit for a moment, that there was something so peculiar in the character of Mr. *Gallatin*, as to entitle him to more information than
other

other members could justly claim, let us see how well the objection is supported by facts.

We find from Mr. *Dallas's* letter to the defendant of the 21st of March 1792, that he found on consulting Mr. *Gallatin*, and some other gentlemen on the *defendant's plan*, that it would not at that time meet with any chance of success, "though its *principles appeared to be good*," Mr. *Gallatin* was therefore informed of the defendant's opinion while the bill for the redemption law was pending, and if he thought it wrong, he ought to have said so, and guarded against it.—Let us now see what took place after the law was passed?—It was passed as we have seen on the 10th of April 1792—the House probably rose on that or the next day, as no law was passed after that day, in the same session; and as Mr. *Gallatin* tells us, that he remained in town but about eight or ten days after the rising of the House, the conversation which I am about to mention, must have taken place within that time—It is related by Mr. *Donnaldson*, who swears "That shortly after the House rose, Mr. *Gallatin*, the defendant and himself, had a conversation together, in which *they all agreed*, that the Act of the 10th of April 1792, embraced the *Unfunded Depreciation debt*, and the defendant then said, it would extend to the old bills of credit if Congress should assume them, upon which Mr. *Gallatin* said the 6th section was more extensive than he had intended. And Mr. *Gallatin* tells us, that on reading the 6th section he agreed with the defendant in his construction of it as to its including the *Unfunded Depreciation debt*—If this was so, it could not be a proviso to the second section, since it is admitted on both sides, that *that* section does not include that debt; of course we have here the opinion of Mr. *Gallatin* in our favour, be it of the importance or not, which upon another occasion has been contended for. Mr. *Gallatin* does not at present recollect any thing having been said about the old bills of credit being redeemable, if Congress should assume them, but Mr. *Donnaldson*, who

speaks affirmatively, swears that the defendant did say; that they would be within the sixth section if Congress should assume them, and that Mr. *Gallatin* then said, the sixth section was more extensive than he had intended, which certainly looks very much like assenting to what the defendant had said—Mr. *Donnaldson* does not, it is true, remember, that the New-Loan debt was spoken of, and the defendant has been pretty severely handled for not mentioning that also; but to this it may be answered, that Mr. *Gallatin* having heard of some objections to the Act, went to learn what they were, and to endeavour to obviate them—This being the case, the defendant mentioned only such things as he deemed exceptionable, and it would have been wonderful indeed, if he had mentioned as an objection to the Act, that it might *eventually* provide for the redemption of the New-Loan debt, when *he himself* had just before proposed a plan, which provided for its *immediate* redemption, and which he had every reason for believing, was approved of by the Governor and the members of both branches of the Legislature. To shew that he has been candid and uniform in every thing relative to this business, it is but justice to remember, that while the Act of April 1792 was depending before the Legislature, he thought it his duty to give it every decent opposition, and that he did so, by mentioning his objections in the fullest manner to many members of each branch of the Legislature, and more especially as it would in its then form, if the resolutions then under the consideration of Congress had been adopted in their full extent, have put the state in the power of the United States, by making her liable to redeem whatever Congress might chuse to assume. To prevent this, his plan enumerated the specific articles of redemption, and surely nothing could be better calculated than this, to preserve the rights of the State, and to preclude all opportunity for speculation—To the honorable Mr. *Thomas* he objected “to the bill as it stood, (page 287) because it would admit of constructions

tions that would open a door for speculation, and for speculations injurious to the State." To the honorable Mr. *Montgomery* he mentioned nearly the same thing; (page 290) and if after this, the Legislature chose to leave the door open, every man had a right to enter at it, and none more so than he, who had advised that it should be shut.

If the law left it open, the law gave a free passport of entrance to every man, and it is an affront to common sense to suppose that for availing himself of it, any man can be punishable!

We are told, Sir, "That at all events the defendant was highly culpable for certifying to the Governor in favour of the holders of the old Unfunded Depreciation certificates, because Mr. *Gallatin* had told him that it was not *his* intention when the law of April 1792 passed, that they should be redeemable." Be it so; but if it is, what is the consequence? Was the defendant to construe the law agreeably to what a *single member* of a *single branch* told him was *his meaning* at the time, or according to what appeared on a *view of the law*, to have been the *meaning of all the members of both branches and of the Governor!* Mr. *Gallatin's* conduct, and where he happens to be right, I have no objection to quoting him, forms a sufficient answer to this objection.—It is in evidence, that he said, he had not intended that the sixth section of the Act of April 1792 should be more extensive than the second section; but that on perusing it, he found that it was, and that it included the Unfunded Depreciation certificates.—He also tells us, that finding this to be the case, he procured the redemption of one for his friend *Ephraim Douglass*—He adds with much good sense, that if he had known that agreeably to the true construction of the law, the New-Loan debt was redeemable, he should, let the intention of the Legislature be what it might, have done the best that he could for his friend—All this is past over as perfectly innocent, so far as it relates to the conduct of one of the members of the Legislature,

gislature, who is the author, and the fautor of this prosecution, and yet, the defendant is held up as a great criminal, for certifying to the Governor in favour of the holders of the old Unfunded Depreciation certificates, although that member, and the Register-General had agreed that it was right ! although that member had procured a certificate of this kind in favour of his friend ; and although it was *first done*, in favour of the Speaker of the Senate at the time of passing the law, and afterwards in favour of able law judges !

But, say the gentlemen, " Let the defendant's opinion have been one way or the other, it was *imprudent* in him to subscribe the New-Loan debt, without first informing the Governor of his intentions." The Governor may perhaps be a very proper person to consult in a case of prudence, but if he is so, and if, which I am far from admitting, prudence required that he should have been consulted ; is a mere act of imprudence a sufficient ground for an impeachment ? If it is, I am afraid that a thousand articles would be maintainable against the best man among us, and that even some of the managers might stand high on the list of criminals ! If the accusers are obliged to have recourse to this ground, the defendant should not have been impeached for violating the laws of the State, but for transgressing the rules of prudence !

But, say the prosecutors, " Whatever may have been the defendant's opinion, the commonwealth has sustained much damage by the subscription of the New-Loan debt, and that he is therefore responsible." Even if this position were true, it could at most but apply in a civil action and not in a criminal prosecution, where the rule is, *actus non fit reus nisi mens sit rea*. But I deny the truth of the assertion altogether. Twenty shillings in the pound were justly due ; *Pennsylvania* by the Act of March 1786 was solemnly pledged to pay twenty shillings in the pound, and that right and justice required that this sum should be paid, is acknowledged by the Act of April 1791 for making up
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the loss to the full amount of that sum, to such of her creditors as should subscribe to the loan of the United States. Again, Sir, if *by law* the New-Loan debt *was* *redeemable*, no damage could arise from *its* redemption, or if there did, it was *damnum absque injuria*. Adjourned.

 The Editor has been under the necessity of deviating from his usual mode of giving each day's argument by itself. On Wednesday Mr. Lewis, owing to indisposition, broke off in the middle of an argument, on one of his points; and he resumed it on the following Friday, and the Speech is given as if that circumstance had not happened. However so far as relates to the transactions on Wednesday, Thursday and Friday, let it be remembered, that Mr. Wynkoop was each day placed in the chair, the committee of the whole attended as usual in the Senate chamber, the Chairman reported attendance, and the managers reported further progress on Wednesday, no further progress on Thursday, Mr. Lewis being sick; and further progress on Friday.

Twenty-first day of the trial.

SATURDAY, MARCH 22.

THE Senate met as usual; the House of Representatives in committee attended.

Mr. Ingersoll observed, that he held a document in his hand which he intended to read, and wished that the defendant and his counsel would take notice, that they might make their defence accordingly.—Mr. Lewis desired him to read it. It was a notification published in *Dunlap's American Daily Advertiser* of June 8th 1792; the date of the notification was 16th May 1792; being the Governor's proclamation for the sale of stock.

Mr. Lewis

Mr. *Lewis* then proceeded—

In order still further to shew, that the defendant conceived his construction of the law to be right, and that he believed other gentlemen to be of the same opinion, permit me now to remind the honorable Senate, of the evidence of the Secretary of the Treasury. He swears that “*all the difficulties on which he so often wrote to the Governor; on which the Governor ordered the conference, and on which the conference was held and conducted, entirely arose on the supposition, of the New-Loan debt being subscribable, and that they could not have existed, but on this point being acceded to.*” That in the conference Mr. *Nicholson* appeared to be of this opinion, and the Governor afforded abundant reason to suppose that he was of the same opinion.

After hearing this evidence, no man can doubt of what the opinion of the Secretary of the Treasury was;—no man can doubt what the opinion of the Governor was, no man can doubt what the opinion of the defendant was, nor, but that he believed these gentlemen to be of the same opinion, since if they had not, as the Secretary tells you, the difficulties could not have arisen, nor could the conference have been necessary. The defendant must have perceived this as clearly as the Secretary did, and unless, which is not presumable, he supposed the Governor to be destitute of common sense, or totally regardless of all sense of duty, he could not imagine that he would *have called for reports, talked of calling the Legislature, or directed a conference without being of the same opinion.*

But, again, Sir, it appears, that Judge *Addison* had applied to have a New-Loan certificate subscribed and redeemed, and that the defendant from mere kindness undertook to get it done for him—That while that application was depending, Mr. *Dallas* objected to the defendant, that it was not authorised by law, and this was the first time of such an idea being suggested by any one. The defendant answered him, that he *was sure he was right*; and what clearly proves that he thought

thought so is, that as Judge *Addison* was going out of town, the defendant, after *this objection had been made*, paid him the full amount of his certificate, as if it had been actually redeemed, and this too, without any deduction for his trouble, or *asking for an indemnity*. Can there be a stronger proof than this of conscious integrity? Or can it be believed, that if he thought the matter at all doubtful, he would have voluntarily taken the risk upon himself? This surely shews, that he considered *Mr. Dallas's present* opinion, so contrary to what it had *formerly* appeared to be, as not worthy of the least regard, when opposed by a conviction in his own mind of the propriety of a contrary one, and that too, supported by opinions entitled to much more respect.

I have already given an answer so much at length, to the objection "That the defendant did not, as he ought to have done, consult the Register-General or the Governor," that I shall only take notice of it at present, for the sake of drawing a well warranted conclusion in favour of the defendant. The active, virtuous and discerning mind of the Register-General is too well known to be questioned, and it is also well known, that circumstances have occurred, which leave no room for the supposition, that he has much partiality for the defendant; or if he had, it will not be insinuated, that he would be swayed by it on the present occasion. He tells you, Sir, as I have already observed, that the defendant did tell him and *Mr. Gallatin*, that the old Unfunded Depreciation certificates, were redeemable under the Act of April 1792, and that on perusing it they were both of them of that opinion—He tells you, that from the certifications made to the Governor, and which passed through *his* office, in the cases of the old Unfunded Depreciation debt, it might, both from the amount of the interest, and the time of its commencement, be easily known, that the certifications related to that debt, and could not possibly relate to any other. Thus far then, there was no want of due communication, both to the Register-General and

to the Governor. It also appears, that the defendant had in his letters and reports repeatedly informed the Governor, that the New-Loan debt was subscribable, and if it was subscribable, no man can doubt of its being redeemable. Here then the objection again fails—But in addition to all this, the Register-General tells you, that *after knowing of the objection made by Mrs. Dallas, and after considering the law*, he was of the same opinion with the defendant, and joined with him, in making several certificates to the Governor, in cases of the *New-Loan debt*, in order that warrants might issue for its redemption at the Treasury, and that as he had no doubt at all about the law, he did not think it necessary to speak to the Governor on the subject—Hence it appears, that there is not the least ground for any part of the objection—Oh! but say the gentlemen, the defendant did not in his certifications to the Governor, in cases of the New-Loan debt, describe it in such manner, as that it could be known, that the certifications related to that debt.” To this I answer, that the certifications were exactly, as appears in evidence, agreeably to the form settled and established by the different officers, as proper to be observed under the Act of April 1792, and that they did not differ, from the form made use of on other occasions; and further, that the Register-General used the same form in cases of the New-Loan debt which the defendant did.

But we are told that “That this business *originated* with the defendant; that he transacted it *privately*, and that it was unfair in him, not to inform others of the same speculation!” This objection puts me in mind of a story, which I have heard related by my friend General Wayne. Early in life, he was engaged in surveying lands in *Nova-Scotia*. On one Sunday morning, he saw a large flock of wild ducks in a pond near to his cabin, and immediately took up his gun, in order to get a shot at them.—An Indian who saw the ducks, and wished to have the *speculation* to himself, came running to the General, and asked him, what he was going to do?—

do?—Upon the General telling him, that he intended to have a shot at those ducks, the Indian exclaimed with uplifted hands;—shame! shame! for you white men, to shoot on the Sabbath;—we poor ignorant Indians are not so bad as you, for we would not do so.—Struck with this seemingly serious admonition from a savage, the General almost concluded to return back and lay aside his gun—While the Indian was detaining him, and endeavouring to prevail upon him to do so, he heard the report of a gun, and saw several of the ducks knocked over; upon which the Indian, leaping from the ground, and laughing very heartily, exclaimed again;—you white people think we savages are fools, but you are not so cunning as we are—That is my squaw, who has shot the ducks, and I came to keep you back, till she should get the first shot!—I believe, Sir, that this is pretty much the case with most people, who see an opportunity for a fair speculation, and that but few are so silly, as to cry roast beef, until they themselves are satisfied.—We find that Mr. Nicholson objected to the bill, because it would afford an opportunity for speculation. It did not enumerate all the articles of redemption, *as his plan of finance did*; several of these articles, might be unknown to the people at large, while they would be well known to some. This would give to a few, advantages for speculation, which many would not have. This the defendant had endeavoured to prevent, but could not; and if the law left a door open for speculating in the New-Loan debt, the defendant should at most have been impeached for speculating *according to law!* not *against it*.

As a further answer to this objection, we have proved, that many other people knew the same thing, and speculated in the same way, and that among them, were men of unblemished character. Upon hearing this, the gentlemen immediately shift their ground and say, that “The business originated with the defendant, *and that he led others into it*, to the great injury of the commonwealth.” How is this objection reconcilable with

the last one? If he *did the business privately, and did not inform others of it*, how could he lead others into it? Or if he *led others into it*, how is it possible, that he did not inform others of it?—In short, the accusers advance *contrary positions, either of which if true, is a refutation of the other*, and yet they contend, that he is guilty on *both grounds*!

But it is not true, that the business originated with him, or that he led others into it. Every man who thought of the matter, judged for himself, and acted accordingly—By the evidence of Mr. *Evans* it appears, that he found, upon reading the law, that the New-Loan debt was redeemable. By the evidence of Mr. *Boggs* it appears, that he discovered it in the same manner. Mr. *Rittenhouse* and others also subscribed the New-Loan debt and had it redeemed. They derived no information from the defendant, nor did he take a single step to conceal any thing from them—So far was he from intending to conceal any thing, that he did the whole of the business *in his own name*, although he well knew, that at the end of the second loan, a scrutiny would take place, as there had at the end of the first, and that if he had acted wrong, he would be detected, and compelled to refund. If his views were improper, how easily might detection have been prevented, by making use of the names of others? Criminality has been imputed to him, but a deficiency of intellectual faculty has not, and yet without such deficiency, it is impossible to account for his not making use of a cloak for his views, if any he had, which would have afforded ample security, without costing him any thing. The charge in one of the articles, *that the defendant acted in the secret manner therein mentioned, in order to avoid discovery and detection, until he should get the money into his possession*, must excite our indignation;—not against the accused, but at the accusation. To avoid detection *until he should get the money into his possession*! He knew that at the end of the second loan a scrutiny would

would take place, as there did at the close of the first; he knew that on that scrutiny, all certificates which were not by law subscribable would be rejected; he knew that if he was acting illegally, he would on that scrutiny be detected, and compelled to refund with disgrace what he had wrongfully received. Let me ask then, Sir, if it was possible for any one of the defendant's accusers to believe, that the paltry consideration of a temporary possession of the money, could have prevented him, as the article charges, from consulting the Register-General or communicating to the Governor, *until he should get the money into his possession?* It is impossible for them to have believed this, unless they also believed, that he intended to run away with the money, before the scrutiny should take place, at the end of the loan! His situation and circumstances in life sufficiently prove, that a mere temporary possession of the money could be no object with him, independent of the disgrace attending the detection, which he knew must await him, and yet as if guilt must always be proportionate to the colouring, or the want of evidence may be supplied by a wanton exaggeration of the charge, we find this paltry motive gravely imputed to the defendant! If I express myself with some warmth, the occasion demands it, and I cannot be so obsequious to the honorable accusers, as to suppress my feelings on considering this charge.

But further, Sir; it is impossible that when the defendant certified the New-Loan certificates to be genuine and assumable, he could have been influenced by the motives imputed to him. The United States had taken no risk upon themselves. A scrutiny was to take place at the end of the loan, when all certificates not subscribable would be rejected. Nor did *Pennsylvania* run any risk under the law of April 1792—That law only provided for the redemption at the Treasury, upon transfers being made to the State-Treasurer for the use of the commonwealth, of the *certificates which the subscribers should receive from the United States, in consequence of*
such

such subscriptions. Had this law been observed, no subscribed debt could have been redeemed at the Treasury of *Pennsylvania*, until the subscription had been approved of by the United States, and of course, no improper redemption could have happened—Some difficulties attended the execution of this law, and the Governor made an arrangement (page 97-98) for *the redemption before the issuing of certificates*, in consequence of the subscription, and of course subjected the state to all losses arising from any of the certificates which were deposited with the Commissioner of Loans, being forged, counterfeited or not subscribable from any other cause. Although there is no reason to suppose, that the Governor did not intend well, yet it must be admitted, that this arrangement was unauthorized by law. When the defendant certified the certificates to be genuine and assumable, he could not know, that any such arrangement would be made. Without it, no payment could have been made at the Treasury, until the Secretary of the Treasury should have decided on the subscribability of the certificates, and it is therefore impossible, for any rational mind to suppose, that the defendant could have had the motives for concealment which have been imputed to him.

But says the same article, “The defendant did not consult the Register-General touching the above transactions, nor communicate the same to the Governor, nor discriminate,” &c. “and thereby all the checks of office, provided by law were destroyed.” What were these checks of office? They were the Register-General and the Governor, and no other checks were provided by law.

If he has destroyed them, he should have been indicted for murder;—not impeached for a misdemeanor.

The gentleman tell us, that “The Secretary of the Treasury, on seeing the law of 1789, altered his opinion, and determined, that the New-Loan debt was not subscribable to the loan of the United States, and that he rejected it accordingly.”

If this were really so, I do not see how it could affect the question at present, but the fact is otherwise. When an objection was made on the part of *Pennsylvania*, the Secretary of the Treasury considered the question on its true ground; to wit—Is the New-Loan debt a still existing debt? If it is, it is subscribable; if it is not, it is not subscribable—This question he did not determine either way, but wished it to be determined by the state—The time for receiving subscriptions to the loan of the United States, elapsed without any such determination taking place, and of course the New-Loan certificates were excluded; not because the Secretary determined that they were not subscribable, but because the time for receiving them had expired and they could not be received whether they were otherwise subscribable or not. This appears partly from his letter of the 8th of February and 21st of August 1793 (page 176-7-8, and 218) but more fully from the evidence given by him in the course of the trial.

I will now dismiss the first, second, third and fourth articles, which for the reason mentioned in an early stage of my remarks, I have not thought it proper to consider separately—my objects have hitherto been to prove, that the defendant acted conformably to law; or if not, yet that he really thought so—If on either of these grounds I have been successful, it is sufficient for my present purpose, and I will now to proceed to consider the

FIFTH AND SIXTH ARTICLES, which charge,
1st. That the defendant did by himself or his agents, purchase a number of the New-Loan certificates, as well from persons who came to exchange the same at his office, as from others; and
2d. That the defendant received of sundry persons, certain New-Loan certificates to be exchanged, whereby the said certificates became the property of the commonwealth, and ought to have been delivered to the Register-General, in order to be cancelled; yet the defendant, well knowing the same to be the property

of the commonwealth, subscribed them to the loan of the United States, in his own name and for his own use and benefit.

These two articles appear to me to depend on a proper solution of the following questions.

1st. Was it criminal in the defendant to buy New-Loan certificates out of his office, in like manner as other persons might? and,

2d. Was it criminal to buy such as were brought to his office to be exchanged, but which the holders of them concluded not to exchange but to sell?

The first of these questions has been very properly given up by the worthy gentleman who spoke last, but as his colleagues have been so far from shewing an equal degree of candour, as to warmly contend, for the affirmative of the question, I am obliged to enter upon its discussion.

The ground which has been taken in order to shew, that it was criminal in the defendant to purchase New-Loan certificates, at *any place* or from *any person* is this—although say the gentlemen, the holders of such certificates had not brought them to be exchanged, they might perhaps have done so, if the defendant had not bought them, and as his buying them, may possibly have prevented their being offered for exchange, it must be criminal—and one of the gentlemen has exclaimed—What! will the defendant's counsel contend, that what is lawful for other persons is also lawful for public officers? and they have concluded by amplifying very much at large, on the duties of public officers, in order to shew that there is one law for them, and another for other people.

“There are,” says Lord *Mansfield*, “some positions so plain and clear in themselves that nothing can make them more so, and therefore one is greatly at a loss how to reason upon them.” The truth of this observation will be admitted by every man who attempts to reason in support of a self evident proposition, since he can make use of no arguments more clear, than the proposition

position is, which they are intended to maintain. Precisely in this situation do I find myself when called upon to shew, that it was no less lawful for the defendant than for any other person, to purchase the New-Loan certificates. They were by the law of 1786 made payable to bearer, and there is no exception in that law, or in any subsequent law, to prevent the defendant or any other person from becoming the bearer. If the clause is general, no person is excepted, and it necessarily follows, that it extends to all persons. It at all times rests with the Legislature to say, whether any particular officer shall or shall not bargain or deal in commodities, which may have some kind of relation to his office—In some instances it is prohibited by express provision made for that purpose, but these instances are but few, and until now, no man ever dreamed that without such prohibition the dealing was unlawful.

In order however to prove it to be unlawful, without any such express prohibition, the gentlemen have said that there are cases of such prohibition and exclusion being specially made, both by the laws of *Pennsylvania* and of the United States, and under the former, they have instanced vendue masters;—under the latter, the Secretary of the Treasury.—But to me it appears, that these instances of express prohibition, afford the fullest refutation of the doctrine, which they are quoted to maintain; since a special provision must be entirely useless, if without such special prohibition on particular officers, there is by law *a general prohibition on all officers*. The Legislature of *Pennsylvania* has not thought fit to prohibit the officers of the Land-office from dealing in land, and they have done so as freely as other people without any body supposing it to be unlawful. What the law *does not forbid*, it *permits*, and where the law has not distinguished, the judges have no right to do so. Without taking particular notice of the many handsome things which have been said on the duties of public officers, these duties may be summed

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up in a few words to be;—*to discharge with fidelity, whatever the law enjoins;—to abstain from whatever it forbids.* A public officer must learn his duties from the laws of his country, and where he can find no prohibition in them, he has a right to say that none exists. I have said, Sir, that one of the gentlemen has exclaimed, What! will the defendant's counsel pretend, that what is law for other persons, is also law for public officers? To this I answer, that they certainly will and boldly too, *in all things* where the law does not *impose certain restrictions*, or *enjoin certain duties upon them.* In all other cases, the public officer and the private citizen are alike; their rights and their obligations are the same, and there is *not one law for the one and another law for the other.*

Oh! but we are told, “It was indelicate in Mr. *Nicholson* to be concerned in the purchasing of certificates,” and on this ground too, has his conviction been warmly urged. If he has not acted up to the nice notions of delicacy, which the accusers possess, they should have given us their creed of delicacy at length; they should have impeached him for indelicacy, and not for a violation of law, and instead of bringing him for trial before a tribunal bound to determine according to law, the managers should have been erected into a court of honour, to determine according to the nice feelings of your pretty, delicate gentlemen, and then perhaps, one *puisse judge* would have appeared to as much advantage, as he does in the character of a manager—If the defendant acted indelicately, the Governor might have dismissed him, but in this tribunal, no Eutopian system, formed out of the fanciful reveries of delicate, visionary men, can form the rule of decision.

If Sir it was criminal in the defendant to purchase New-Loan certificates out of his office, because the holders of them *might perhaps*, have brought them to his office to be exchanged, it was from the passing of the law of 1786 equally so in him, to purchase Continental certificates, since his office was the proper place for exchanging

ing them for New-Loans, and perhaps the holders of them might have brought them there for that purpose. I do not mention this as an answer to the objection, for I think it deserving of none, but merely to shew, that as on the same principles, the defendant has sined from the beginning, his accusers may have an opportunity to bring forward an additional article against him.

The next question is ;—Was it criminal in the defendant to purchase certificates brought to his office to be exchanged, but which the holders of them afterwards concluded to sell.

The sixth article states, that “ The New-Loan certificates by being brought to the office to be exchanged, and by virtue of the Act of March 1789, became the property of the commonwealth, and ought to have been delivered to the Register-General to be cancelled,” yet that the defendant subscribed the same in his own name and to his own use, to the injury and loss of the commonwealth.” If these certificates upon being brought to the office to be exchanged, became the property of the commonwealth, *without any exchange being made*, the defendant has acted against law, but if they did not so become the property of the commonwealth, this objection does not differ from the one last mentioned—Before adverting to the evidence, it will be proper to consider the law, since if it has been entirely mistaken by the honorable accusers, this charge also, must lose its sting.

—They say that the certificates, immediately upon being brought to the officer, became the property of the commonwealth, and we say, they did not until the New-Loan certificates were delivered to the state by the holder, the balance of interest settled, that balance paid and the old Continental certificates delivered up by the state, and that until all these things were done, it was but a proposal, not an exchange, and of course there could be no change of property. That it may be seen which of us is right, I must turn to the law of the 27th March 1789.

It has already been observed, that *that* Act was not compulsory on the holders of New-Loan certificates, to exchange them for the old Continental ones, but that it was left at their election to do it or not, as they might think proper. Although this is a material consideration at present, I will not at this time make observations to prove it. It is a matter to which I have already spoken pretty much at large, and if my principles were sound, repetition cannot be necessary;—if unsound it would be useless. The third section of the Act, after mentioning that “difficulties might arise in equalizing the interest paid by this state, to the holders of the New-Loan certificates, with the interest received by this state from the United States, authorised the President or Vice-President in Council, to cause the New-Loan certificates, on the holders thereof applying therefor, to be returned through the office of the Comptroller-General, provided that no certificates should be so returned, until the interest paid by this state on the New-Loan certificates, should be equalized, and the overplus or balance, beyond what had been received by this state from the United States, should be repaid in indents of the United States, to the Comptroller-General, for the use of this state, and in every case, where this state should have received more interest from the United States, than should have been paid on the New-Loan certificates, the Comptroller-General should pay such overplus in indents to the holders of such certificates.—After attending to this part, and on this question it is the only material part, of the law of March 1789, it is difficult to conceive, on what principles the honorable accusers, in all their laudable zeal for accusation, could have imagined, that the New-Loan certificates became the property of the commonwealth immediately on their being offered for re-exchange, and without any of those requisites being complied with; and what must greatly increase our wonder is, that we see their honorable managers and learned counsel throwing down the gauntlet, and appearing as champions

champions in vindication of the position! Our armour consists of the defensive weapons of argument only, but we hope not to be found recreant.

Although there might perhaps have been a very few exceptions, yet very generally speaking, the state had paid to the holders of the New-Loan certificates, more, frequently much more interest than she had received from the United States—She therefore very prudently provided by the law of March 1789, that no re-exchange should take place nor return of certificates be made, until the interest paid by this state on the New-Loan-certificates, should be equalized and the overplus or balance be repaid—By this provision she declared, that her right and property in the Continental certificates should not cease or be divested, until New-Loans to an equal amount should be delivered to her, and until the interest paid and received by her, should be equalised, and the balance paid to her—If then the right and property of the state in the certificates which she had received upon loan, was to continue until all these things should take place, is it possible to imagine, that the right and property of the holders of the New-Loan certificates, could be divested before that period had arrived! If it is, it follows, that the state was at the same time owner of both the old Continental and the New-Loan certificates, and that the humble individual was owner of neither! What, would the consequence of this doctrine be? Why that a holder of a New-Loan certificate, who had no other property in the world, might be told that it would be best for him to have it re-exchanged for the old Continental one. He believed so and carried it to the Comptroller-General for that purpose—The Comptroller-General tells him, it shall be exchanged, but as you have received one, two or three year's interest from the state, more than the state has received from the United States, you must pay the difference before an exchange can take place—The individual replies, I have no property in the world save this certificate, and I therefore cannot
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do it ; give me my certificate that I may do with it, as well as I can ; no, replies the Comptroller-General, by offering your certificate for exchange, your property in it is divested, and it now belongs to the commonwealth. Give me then says the other my old Continental one in lieu of it.—No replies the Comptroller-General I cannot do that, until the balance of interest is equalized and paid—This says the individual I shall never be able to do, because I have no other property, and if you keep both certificates, I am reduced to beggary.—It is so, must the defendant, on his accuser's principles, reply, but I cannot help it ; your property in one certificate is divested by your offering it for exchange, while your property in the other is not re-vested, because you are not able to comply with the necessary terms !—I now ask, Mr. Speaker, if any thing can be more true, than that these consequences result from the doctrine contended for ? I further ask, if the doctrine contended for is not a very high *article of impeachment* on the honour and integrity of *Pennsylvania* ? If an answer to both these questions must be given in the affirmative, it will be an ample refutation of the objection. Exchange is the act of giving and receiving reciprocally ; it is traffic by permutation ; it is the giving of one thing for the sake of another, and to talk of an exchange without a mutual transfer of property, is to misconstrue the meaning of a word, which no school-boy is at a loss to comprehend—In a good old book of the law, in which nothing but truth is to be found, it is recorded that “ In every exchange there are two grants, for that each party granteth to the other in exchange ;” and yet the defendant's accusers have discovered, that there may be an exchange, although one party parts with nothing, and although the other, does not comply with the terms on which such exchange had been proposed ! I might dilate on this subject, as I might at the meridian hour of a clear day, to prove to a man of perfect vision, that the sun shines, but lest I might become the object of ridicule, I will forbear.

bear. So much for the law, and now for the evidence relating to this question.

It appears that several persons, whose names or number it would be useless to mention, withdrew their New-Loan certificates, after carrying them to the defendant's office to be exchanged. A change of mind in the holders of them, was occasioned by various circumstances, which have been given in evidence, and which it is needless to relate. The acquiescence of the defendant in that change of mind, nevertheless proves, that he thought the right of re-exchanging or not, rested with the party, until the re-exchange was completed—nor was this the opinion of him, only, but of the Governor also. It is neither stated in the charge nor proved by the evidence, that the holders of the certificates offered to be exchanged, tendered the balance of interest due from them. It is neither stated nor proved that they were prepared with indents for that purpose. If this was not the case, an exchange could not be made agreeably to the terms of the law, nor was the defendant authorised to make such exchange.—But say the gentlemen, when terms offered by one party, are agreed to by the other, the bargain is compleat, and that, as the state offered to exchange the old certificates for the new ones, a change of property took place, the moment the latter were brought to the office for that purpose. I may admit the first part of this argument to be just, without conceding the latter, since it is not true, that the state offered to exchange the old certificates for the new ones; but for the *new ones and the balance of interest due from the holders of them*. By a letter of the 24th of December 1791, (page 221) the defendant informed the Governor, that a number of exchanges to the amount of forty or fifty presented, were pending for want of the parties paying the indents due, and by the same letter he mentioned, that the holders of the new certificates were, on presenting them, and liquidating the interest received thereon, entitled to receive back their former ones or an equivalent;

valent; and it also appears, that by another letter, he informed the Governor, that some certificates brought to be exchanged, had afterwards been withdrawn by the parties. This the Governor very well knew, could not have been legally done, if immediately on being brought to the office, they had become the property of the state, but he was so far from entertaining so idle a notion, as to express no disapprobation of the defendant's conduct. From Mr. *Oldden* no less a balance of interest than £. 194:8:5 was due. No part of it was either paid or offered, nor does it appear, that Mr. *Oldden* was prepared with it. Without offering it, he was not entitled to the old certificates, nor was his property in the new ones lost. The certificate purchased from Mr. *Biddle*, had been stolen from Mr. *Thompson* and it afterwards came into the hands of Mr. *Biddle* for a valuable consideration. This occasioned some little hesitation with the defendant at first, and he proposed writing to Mr. *Thompson*, but he afterwards wrote to a more proper person, namely the Governor, for his directions.

From Mr. *Biddle*, a balance of interest was also due, but as that balance was neither paid nor tendered, the observations which have been made, respecting Mr. *Oldden's* certificates apply here, and need not be repeated—I have now done with the fifth and sixth articles and shall proceed to the

ARTICLE SEVENTH; which charges,

That the defendant, after “Receiving from sundry persons, certain New-Loan certificates, in exchange for Continental ones, subscribed the same in his own name, and for his own use and benefit,” and the instance relied on is *that*, of one to the amount of £. 3275:19:4 said to have been received in exchange from Mr. *Blair M'Clenachan*.

I have now arrived, Mr. Speaker, at the most interesting, the most serious and the most important part of the whole business, since if this charge be true, the defendant

defendant has committed a crime of the darkest die, and is deserving of the most exemplary punishment—He had been largely confided in by his country, and this article charges him with a violation of the trust! he had taken an oath to execute that trust with fidelity, and this article charges him with a violation of that oath! The property of the state had been committed to his care, and this article charges him with a perfidious, and more than felonious appropriation of that property to his own use! a man capable of all these things will stop at nothing! he must not only have drank deep of the cup of iniquity, but he must have swallowed the last dregs of corruption! If this article does not enumerate the whole catalogue of vices, it boldly charges the defendant with a capital one, of such an hue, as to be indicative of a mind capable of “The oldest crimes the newest ways;”—of a mind so abandoned and corrupt as to be under the restraint of no moral or religious principle, nor likely to stagger at the perpetration of any iniquity, from the humble grade of a pitiful, petit larceny, up to the fullness of the black chapter of hardened villany! The probability of its commission is therefore diminished, in proportion to its magnitude, and before a being of rational intelligence can say upon oath, that the charge is true, it must be verified by evidence, affording a much stronger probability of guilt, than the probability of innocence, arising from the character of the accused, and the enormity of the charge can possibly be. We are told by the celebrated HUME, whose enlightened mind, and close concatenation of argument, is surpassed by nothing in antient lore or modern erudition, that a wise man proportions his belief to the evidence, and that when the evidence is, from any cause whatever, less probable than the thing which it is intended to verify, it ought to be rejected. Save on some subjects, on which I presume not to speak, because I am incapable to judge, I might almost observe, that naught but truth ever came from the pen of this great man. He tells

us, as others had before done, that “It was a proverbial saying in *Rome*, even during the life-time of that philosophical patriot;—I SHOULD NOT BELIEVE SUCH A STORY WERE IT TOLD ME BY CATO; the incredibility of a fact, it was allowed, might invalidate so great an authority!—To apply this principle of reasoning, sanctioned as it is by so great an authority, to the present case, permit me to ask;—Whether it is most probable, that the defendant has committed the imputed crime, or that Mr. *McClenachan’s* memory fails him? To determine this question, the character of integrity, supported by the one, and of inaccuracy in point of recollection sustained by the other, merits our most serious consideration.

Political opinions are not the test of virtuous principles, nor should the heart of a neighbour be questioned, because he does not adopt our political creed, which may perhaps be more erroneous than his own.

I have no right to set myself up as an arbiter between us, nor to suppose, that his motives are impure because our opinions are not the same.

The defendant’s charity; his benevolence; his liberality are equalled but by few; perhaps surpassed by none;—they do not shew themselves in an ostentatious parade, calculated to raise and to emblazon a name, but in the private and humble walks of indigency relieved, they are inscribed in tablets, not to be effaced by the malice or teeth of time. He has been censured for his political conduct; whether deservedly or not, is immaterial at present, and cannot be worth an enquiry—*That* political conduct however raised up political enemies against him, and such is human nature, as to leave but little room for doubting, that if aught of corruption in private life could have been found against him, it would have been laid hold of by some of them to effect his ruin—*Pennsylvania* by entrusting him for more than ten years with almost unlimited powers, without check or controul, affords the most ample testimony; *that of the voice of the whole people of Pennsylvania,*

sylvania, in favour of the integrity of an old, faithful and long-trying servant. It has without contradiction been stated, that within that period more than thirty millions of pounds have passed through his hands—The late Supreme Executive Council were authorised and required, and they once a month did by themselves or a committee, examine his books, his papers and his vouchers, respecting the exchange and re-exchange of certificates. Though monthly weighed in the balance, he was never found wanting. The same books, papers and vouchers, as well as all others relating to his official conduct, have from time to time been examined with the searching eye of severe scrutiny by different committees of the honorable Assembly; and what has been the result? *No discovery of fraud of any kind.*

Is not this, Sir, an almost unanswerable argument that it did not exist? If it is not, permit me to observe, that long and laborious researches were made by the committee of ways and means, without a discovery of any thing like guilt, if we do not find it here. Their report may therefore be considered as strong evidence of innocence in all other respects. Again, Sir, another committee were busily employed during a long recess of the House, with powers to send for persons and papers, if such powers could be given by a single branch of the Legislature, in beating up every bush and cover, where it was possible for fraud to lurk, or guilt to be concealed;—And what have they discovered? Not a *flashed mite*, from all the glittering millions entrusted to the defendant's care, if he is innocent of this charge.—His character then appears to have been, without blot or blemish; his conduct on all former occasions, free from dishonesty of every kind—If this is the case, is not *the incredibility of the fact, sufficient to invalidate the charge*, and could we believe such a story were it told us by Cato?—*A perfidious appropriation of property, in violation of a sacred trust, and in violation of his oath!* No juvenile sinner,

no raw, unfledged stripling in the paths of vice, would begin the career of villany with so bold a leap!—It is not in human nature, for the human heart to become so corrupt at once! It begins with little things and proceeds gradually, as it becomes more hardened, to greater ones, until it reaches that desperate length when it boldly spurns all laws, human and divine. It starts back with horror at first from those crimes which, when long hackneyed in iniquity it is prepared to perpetrate with eagerness. If such be the nature of the mind of man, it is almost a violation of the law of nature, to suppose the defendant guilty of the crime imputed by this charge, since we do not find his mind prepared for it, by those of a less grade—Reasoning on these principles, I can see no sufficient ground for the defendant's conviction, even if I should admit Mr. *McGlenachan's* memory to be so perfect as that it could not fail him. His integrity is unquestionable, and independent of this charge, I believe the defendant to be equally so. The defendant cannot be guilty without a violation of his oath, and I know of no rule by which it could be determined, whether the defendant or the witness considers the obligation of an oath as more sacred. The probability is, that they hold it in equal veneration, and that no consideration could lead either of them to its violation. The defendant cannot however be guilty, unless he has wilfully violated his oath; but he may be innocent, although the witness has paid the most sacred regard to his. That this is the case, I shall endeavour to establish by many additional circumstances, tending to shew, that Mr. *McGlenachan's* memory has failed him. That the defendant subscribed in his own name, and for his own use and benefit, such a certificate, as is mentioned in this charge, is not denied; but it is denied that he received it in exchange for the use of the commonwealth. On this the whole charge depends.

It is peculiarly worthy of consideration, Sir, that the certificate mentioned in this charge, was subscribed in
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the defendant's own name—He knew that at the end of the loan a scrutiny would take place; he knew that *that* scrutiny, together with such as had been set on foot by the Legislature of *Pennsylvania* would lead to his detection, his disgrace and his punishment, if he subscribed the property of the commonwealth in his own name, and for his own use and benefit; he knew that this might easily be prevented by the subscription being in some other name. The wicked flee when no man pursueth, while the righteous is bold as a lion.—Is it then credible that the defendant, whose intellectual faculties cannot be called in question would, if he was a guilty man, have furnished the certain means of his conviction, when they might have been so easily prevented? Certainly not, and hence arises a strong presumption of his innocence.

If my recollection is right, Sir, the evidence affords another ground of defence, which must, I think conclusively shew the defendant's innocence, and the inaccuracy of Mr. *McClenahan's* recollection—There does not I think appear, to be any deficiency in the amount of New-Loan certificates, received by the state, in exchange for Continental ones. If I am right in this, and I think the contrary has not appeared in evidence, nothing can be more clear, than that this certificate did not belong to the state, else a want of certificates to a like amount, belonging to the state, must have appeared, which I think is not the case.

But the evidence of Mr. *McClenahan*, like the club of *Hercules*, is relied on to beat down all opposition. It is, "That he never sold any certificates to the defendant, or exchanged any with him, in his private capacity."—The character of integrity, deservedly maintained through life by this good man, forbids an idea of his saying what he does not believe. There are occasions however, in which something more than integrity is required, to entitle a witness to full credit. If he is in all things hurried and confused; if his memory is at all times remarkably defective; if he deals largely,

largely, without keeping any accounts or memorandum; if he speaks negatively; if he relates a story, *not to be believed, though told by Cato*; if he speaks doubtfully on many things, where accuracy and positive recollection might be expected; and finally, if he appears to be mistaken in other things where a mistake is hardly possible, such a man is not entitled to full credit, however good his heart may be; nor should a man of fair character be forever blasted on his evidence! Let the evidence of Mr. *M'Clenachan* be weighed by these rules.

That he is a gentleman of this description cannot be denied; that his memory is so extremely defective as to disable him to give an accurate account of even recent transactions is equally true; and that his evidence is liable to all the other objections which have been mentioned will presently appear. Our adversaries rely on his integrity, and we admit that his integrity may be relied upon, although his evidence *cannot*—If he really sold the certificate in question to the defendant, it would be rather extraordinary if he should remember it; quite natural for him to forget it. But independent of what has been said, there are many strong grounds for the supposition, that he is mistaken—In the first place he speaks not affirmatively but negatively, and this amounts to nothing more, than that he does not remember it, and this I can readily believe.

When a man of integrity speaks affirmatively, we are induced to believe him, however bad his memory may be, although we must suspect his relation to be inaccurate; when negatively, his evidence can amount to but little, either way.

That these observations apply with great force to the evidence of Mr. *M'Clenachan* will appear, when it is considered, that he dealt very largely in certificates of various kinds, for a number of years, but never kept any account or memorandum of them, because, as he himself tells you, it was of no consequence of whom he bought them, nor to whom he sold them—If then
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he considered it as of no consequence from whom they were bought, nor to whom they were sold; if he never kept any account or memorandum of their quantity or amount, nor of the names of the persons with whom he exchanged; from whom he bought, nor to whom he sold; and if he dealt in them for a number of years and to a prodigious amount, does it follow, that he did not part with this certificate to the defendant, because he cannot recollect it? And is it not more probable, that he has forgotten, than that a man of fair character, has committed the *black crime imputed to him*?—He is not able to tell from whom he bought, nor to whom he sold other certificates, and why may not his memory have failed him with respect to this as well as to others? He does not remember from whom he bought this certificate, and why should he remember to whom he sold it? He does not remember that he ever had it, and why should he remember any thing about it? He does not remember any thing about it, and how can he recollect exchanging it with, or selling it to the defendant! The honorable managers and learned counsel very well know, that the prosecution must fail, unless they prove, that this certificate became the property of the state, by being received in exchange from Mr. *M'Clenackan*; but his memory is so treacherous, as to reduce them to the necessity of calling upon Major *M'Connell* and the State-Treasurer to prove that it ever belonged to him;—they prove this, but they prove no more, and is it to be expected, that these gentlemen should be able to prove all the transactions which ever took place between Mr. *M'Clenackan* and the defendant? *It is not*; and if there ever was cruelty in a prosecution, it certainly exists, where those who conduct it, on finding that he who must once have known every thing respecting its grounds, has now forgotten them altogether, endeavour to supply his defect of memory by witnesses, who cannot be supposed to know any thing which might operate in favour of the defendant. That Mr. *M'Clenackan* once owned this certificate is in full evidence

evidence from two gentlemen of respectable character; from him the honorable Senate can learn nothing respecting it. Is it then extraordinary, that he who once owned this certificate, but does not recollect it; nor is able to tell from whom he received it; nor to say one word about it; should forget parting with it to the defendant? Nay, would it not be more extraordinary, if a man who does not recollect to have ever had a certificate, should tell you, that he recollects parting with it to the defendant!

Innocence of conduct, Mr. Speaker, I have always been taught to believe, afforded ample security, but on the principles contended I find, if they are sound, that *that* security does not depend on innocence, but on the scanty portion of the faculty of memory, which may have been bestowed on an individual.—Again, Sir, what aspect will this business wear, if I make the extraordinary admission, that Mr. *M'Clenachan* is remarkable for his retentive memory, and accuracy of relation; and if I go further and admit, that he never did sell this certificate to the defendant, nor exchange it with him in his private capacity? Not any aspect unfavorable to the defendant, because all such certificates were payable to bearer and transferrable by delivery. The witness dealt largely in them, but does not know from whom he bought nor to whom he sold.—Although he does not recollect it, he received this certificate from Major *M'Connel*, as appears by the evidence of that gentleman. That Mr. *M'Clenachan* not only bought, but sold certificates, appears from his own testimony. Whether he sold this certificate to some other person or not, he cannot tell, since he has forgot that he ever had it. May it not then be, that if he did not sell it to the defendant, yet that he sold it to some other person? And if so, may it not have come fairly into the defendant's hands in the course of his extensive dealings in certificates? It surely may, nor can any thing be more likely. Mr. *M'Clenachan* was we find, in the habit of selling certificates, but he cannot say to whom,
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or this certificate might perhaps be easily traced to the defendant's hands. If he cannot say to whom he sold, why are we to expect that the defendant can prove, from whom he bought? Because say his accusers, "He is an accurate man."—That he is an accurate man, in matters wherein accuracy is required, or can be useful, is admitted; but what occasion could there be for accuracy in keeping an account of the names of persons, from whom he bought, or to whom he sold certificates? Or how could it be useful? Mr. *McClenahan* says, he kept no such account, because it was of no consequence. Most other people reasoned I believe in the same way, and I very much doubt, if many instances can be shewn, of such accounts being kept by dealers in certificates. Mr. *McClenahan* was asked if he could tell the names of all the persons from whom he bought, and to whom he sold certificates, but he deemed the question so unreasonable, that he refused to answer it, and yet the guilt of the defendant is strongly urged, because he cannot prove from whom he got this certificate. On the same principles might he be called on to prove, from whom he received every certificate, of every kind and description which he ever owned; on the same principle it might be concluded, that wherever he could not furnish such proof, he had stolen them; and on the same principle, might the same conclusion be made against every other man under the like circumstances! But say the gentlemen, the defendant kept a diary of all his transactions, and if he had bought this certificate, an account of it would appear in that diary. Sir that diary lies on the table, and if the gentlemen will permit it to be read, it will be found, that it does not contain an account of *all his transactions*, nor of any single transaction of any kind whatever, except of the public business of his office, transacted by him for other people as Comptroller-General. If the gentlemen will permit the diary to be read, they will find this to be the case, and if they will not, its contents should not be misrepresented. The defendant thought it of no

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more consequence than Mr. *McClenachan* did from whom he bought, nor to whom he sold certificates, nor *did he ever keep any account thereof*—On the same ground, then, might he be impeached on account of every other certificate subscribed by him, and which had been issued in any other name than his own; on the same ground, might all other persons, under the like circumstances be impeached; on the same principles might their guilt be presumed. This doctrine would also extend to Continental certificates, subscribed under the first loan, since with equal propriety it might be urged, that the state had received them in exchange for New-Loan certificates, as it is now urged that this New-Loan certificate was received in exchange for a Continental one. I believe I have already observed, that a strong presumption of innocence arises, from the defendant having subscribed this certificate in his own name, since he must have known, that if he had pilfered it from the state, a deficiency in the New-Loan certificates to the same amount would appear, and also, that he had subscribed this certificate, the property of the state, in his own name and for his own use. But few men, when in the commission of crimes, are so careless of consequences, as not to take some pains to avoid detection; none so silly, as to furnish evidence against themselves—The defendant, if he be really guilty, forms a strange exception to the rule, since he might have avoided detection, by subscribing in the name of some other person, or fixing on other certificates, received from persons who are since dead, or from strangers who could not now appear against him.

The great doubt with which Mr. *McClenachan* answered many of the interrogatories, his total forgetfulness of several things, which he must once have known, and which are of such a nature, as to be not easily forgotten, and his own account of his manner of transacting business relating to certificates, will best shew, how far his memory is to be relied on, when speaking negatively.

He

He tells you, that he did not make out any account or list of his certificates, when he delivered them to Mr. *Nicholson* to be exchanged, nor can he say whether he received their full amount in return, as he did not know the amount of either, though the amount was very considerable. Was such a carelessness in business; such an indifference about property ever manifested by mortal! (vide page 26) and is the negative testimony of such a witness after a long lapse of time, sufficient to prove that a thing did not happen because he does not remember it? He tells you that it is probable that he had a certificate of that amount, but he cannot be certain thereof—If he cannot be certain, that he had it, he cannot be certain that he gave it to the defendant to be exchanged, and if he does not know, nor pretend to say this, how can the honorable Senate learn it from him? It is not in proof that he ever had the certificate after March 1790, and if so, it cannot be in proof that at a period long after, he delivered it to the defendant to be exchanged. He was in the habit of selling certificates; but what certificates or to what amount or to whom he cannot now inform you, and why may not he have sold this as well as others?

When called on to give an account of his transactions with *Matthew M'Connell*, he says, that he never, to the best of his knowledge, either sold or lent to, or deposited with *Matthew M'Connell* a certificate to the amount of £. 3275:19:4 and that as he did not lend him such a certificate he could not receive it from him in return.

This is not saying it is true, that he never received one from him to that amount, but when called upon to relate, what had passed between them in their dealings in certificates, it is impossible to suppose, that a man of Mr. *M'Clenachan's* fair character, would have played upon words in this manner, or endeavoured to conceal the truth, if he had remembered receiving such a certificate from Mr. *M'Connell*, and yet, that he did receive such a certificate from him on the 23d of April

1788 is proved by that gentleman and by his books. Here then is full evidence of Mr. *McClenachan's* memory failing him, as to the buying of this very certificate from one gentleman, and is it more extraordinary for him to forget the selling of it to another?

He says Sir, that he lent Mr. *McConnell* a number of *small* certificates, amounting in the whole to upwards of £. 3000—and that he made a memorandum of them in a book. This entry of them in the book was, because they were to be returned—It has since been produced, and among these *small* certificates we find, besides several to a larger amount than £. 200 each, one to the amount of £. 328 : 9 : 9 another to the amount of £. 398 : 8 : 9 and another to the amount of £. 1350 : 0 : 0—Surely the witness would not have called the last one, a *small* certificate, if he had recollected it. He must therefore have forgotten, notwithstanding the entry made in his book. Had it not been for that entry, it is probable, that the whole transaction would have been forgotten, and that his memory, though aided by it before giving his evidence, was so extremely treacherous as to fail him, when giving it without having the books before his eyes at the very moment of doing so. Here he speaks *affirmatively*, that they were all small. He is mistaken, and why not so, when speaking negatively, and without the help of a memorandum to refresh his memory? Another very extraordinary circumstance attending the evidence of this gentleman is, that although from the help of his memorandum, he is enabled to recollect, lending to Mr. *McConnell* on the 30th of March 1789, certificates amounting in the whole to upwards of £. 3000—yet when called upon to give an account of all their dealings in certificates, he mentions no others (page 251) although Major *McConnell*, when asked whether, the certificates for £. 3275 : 19 : 4 was paid or sold to Mr. *McClenachan*; tells you, “That it was delivered to him agreeably to an engagement or contract. That Mr. *McClenachan* delivered him some certificates, for which he was

to deliver him a certain quantity of another kind, and that he delivered him more certificates besides this at the time alluded to, and afterwards." This transaction happened in April 1788, (page 250) and it cannot therefore be the same with that which Mr. *McClenachan's* entry enables him to recollect having happened (page 254) in March 1789. It proves that Mr. *McClenachan* parted with certificates to Major *McConnell* besides these mentioned by him to more than the amount of £3275:19:4 and that in April 1788, he was partly repaid by one certificate to that amount, and partly by more certificates at the same time, and fully by more certificates afterwards—yet every trace of this transaction is entirely erased from the memory of the witness—Impressions made on his mind by objects of distress, or a sense of religious or moral duty are lasting; all others are but momentary, and like a bird in the air leave not a trace behind.

If this is not sufficient to prove, that no other conclusion is to be drawn from Mr. *McClenachan's* not being able to recollect a fact, than that he has forgotten it, demonstration of its truth will be afforded by that which is to follow—The whole amount of certificates which he mentions, as having been received by him from Major *McConnell* is upwards of £. 3000, which was returned to him in consequence of the loan of March 1789—I have already shewed, that besides that sum, he received from him to more than the amount of £. 3275:19:4. Let us now attend to the evidence of Major *McConnell*, supported by an accurate list made at the time, and furnished from his books—It amounts to no less a sum (page 191) than £. 46035:11:5 in certificates delivered by him to Mr. *McClenachan*! It follows that the sum of £. 13000 or thereabouts has escaped the witness' memory, besides much more than £. 3000 parted with by him to Major *McConnell* in April 1788!

After such astonishing proofs of a treacherous memory, permit me to ask, if it would not be cruelty in

the extreme; barbarism almost unexampled; to condemn even a rat to be ducked, because such a witness may not remember, that the poor animal had counselled its companions, against an invasion of our stack, or our mow!

In short, Sir, notwithstanding the large dealings in the certificate business, which took place between the witness and Major *McConnell*, the mind of the former is a mere blank, except where his memorandum made an impression, but even that impression was so fugitive, as to be gone, the moment the book was out of his hands!

I have said, Sir, that he expresses himself on many occasions, as to be sure an honest man who doubts would do, with so much hesitation as to shew, that he is certain of nothing. His answers afford ample testimony of this, and I need not go through them to prove it. It has been objected, that as Mr. *McClenachan* tells you, "He took all the New-Loan certificates that he possessed, and which were to a very considerable amount, to be exchanged." This must have been amongst them. To this I answer, that this evidence can only apply to the certificates which he then had, not those which he had parted with, and of course it proves nothing at all, since it does not appear that he then had the certificate in question.

"I took no account," says Mr. *McClenachan*, "of either the number or value of the certificates, nor of the time of delivering them to be exchanged." How little must he then know respecting them!

Whether the certificate in question was exchanged or not, or whether the witness received Continental ones in lieu thereof, he cannot tell (page 255-6.)

Whether he received Continental certificates in exchange for his New-Loan ones altogether and at one time, or at different times he does not remember (page 256.)

Mr. *Nicholson* obliged Mr. *McClenachan* at his request at different times with indents, but to what amount the witness cannot say (page 257.)

On

On a final settlement of the account of the witness with the state, a balance appeared against him, of 4446 dollars and 24 cents, which at his request the defendant paid in the summer of 1793 (page 257.)

I might perhaps Mr. Speaker, with great safety to my client, close my observations here, but I still rest on one strong ground of defence, surrounded by impregnable ramparts of truth and safety, from which it will never be in the power of the well organized and arranged, the well trained and disciplined band of veteran assailants to displace me. The charge is, that this certificate had been received in exchange for another one, and it thereby became the property of the state.—If this is not proved, there is no evidence of the defendant's guilt and he must be acquitted. It is not incumbent on him to prove, that it was not the property of the state, but on the state it is incumbent to prove, that it was. What is the proof which the state affords of this? Why that in March 1790 it was owned by Mr. *McClenachan*, and that at a subsequent period, he cannot tell us when, he delivered all the certificates which he then had, without being able to mention their amount or number to the defendant to be exchanged; that he received in exchange, certain others, the amount or number of which he cannot tell; nor did he ever know, whether the certificate in question was among them or not;—he cannot say nor does he know that he ever saw it. Although we cannot learn it from him, we learn from others, that he owned it in March 1790, but as he was in the practice of buying and selling certificates, upon a very large and extensive scale, without keeping any accounts whatever respecting them, he may have parted with this certificate, in April, May or June of the same year. Upon whom then does the burthen of the proof lie? The prosecutors tell us that when stolen goods are found upon a man, he can only be acquitted, by proving that he came honestly by them, and they have endeavoured to apply that principle to the present case. The principle is certainly a
good

good one, but before it can be applied, it must appear, that the goods were stolen—Before an enquiry respecting the thief can take place, it is necessary to prove that a felony was committed, and until that appears, the party accused may safely remain silent—So here; until it is proved that this certificate became the property of the state by being received in exchange, the defendant is under no necessity of proving that he did not purloin it from the state. If it never belonged to the state, it is impossible for the state to be defrauded by its abstraction. It is therefore incumbent on the state before this charge can be maintained, to establish a property in this certificate. Of this, though essential to a conviction, and without which it is impossible, where truth and law prevail, for a conviction to take place, not a particle of proof has been offered—It has only been shewn that Mr. *McGlenachan* owned it in March 1790, and that more than two years afterwards he delivered all the certificates which he then had, to the defendant to be exchanged;—but as he had been in the habit of selling certificates, and knows nothing at all about this, there is no more evidence, of his having parted with it to the state, than to any private individual whatever. Unless this ground is supported by evidence, the prosecution must fail, but in support of this ground there is no evidence.—Evidence in support of its truth must be home against the defendant, or he has a right to demand an acquittal—The evidence adduced for that purpose, is in the language of an antient orator, no less feeble than would be an attempt to put out the sun, by fanning in his face with a peacock's feather.—Here then, Sir, permit me to pause and to make a serious and determined stand;—a stand on ground so sure and solid as to afford perfect safety wherever evidence is attended to;—truth respected; law regarded or innocence presumed until guilt appears.

I said, Sir, in an early stage of my remarks, that to a conviction on a charge of perjury, the evidence of two witnesses is required. The law is the same on a charge

charge of high treason, because an oath of fealty is supposed to have been taken, even though owing to age or sex it was not by law required. Having mentioned my reasons and quoted my authorities then, they shall not be repeated now. I only request that they may be remembered, and that it may be seriously considered, whether the same principle is not applicable on the present occasion.—The consequence of a conviction will be a removal from office;—it may be a “disqualification to hold any office of honour, trust or profit under this commonwealth.” Of this I should nor have taken any notice, had not the supposed mildness of the punishment, been strongly urged as a reason for conviction.—Let your men of *delicacy*, who urge a conviction, because to their *delicate* feelings it appears, that the defendant has not acted delicately say whether to a man of honour such a punishment is not worse than death!

*Mr. Speaker and Gentlemen of the
Honorable Senate,*

Circumstances, of which my present appearance, affords too ample a proof, have entitled me to some indulgence, but I have received it in such a degree, that I will not abuse it by taking up time in a recapitulation.

Before you, appears a man in the open and erect form of innocence;—a man whose integrity was till now never questioned;—a man in whom *Pennsylvania* for a series of years, reposed more confidence than she ever did in any one of his accusers;—not less than in any one of his honorable judges;—a man whose benevolence and kindness of disposition are converted into crimes! And you see him charged with not only the summit of human, but the depth of infernal wickedness! and this too upon the evidence of a man, who is not able to relate with accuracy to day what happened yesterday.

To what or to whom shall the defendant under these circumstances appeal, in vindication of his abused innocence?

nocence? Not to his honorable judges, *as benign dispensers of mercy*;—for her favours he disdains. The feelings of conscious integrity, will not permit a man, who has not sinned; to accept so degrading a boon.—But his appeal is to justice, and he is too proud to accept of any thing else;—to justice not in the haggard form, in which she appeared in another place; where upon a *tale* related by one man, of what had been told him by another, a very high charge was made and voted to be true! Where this was deemed sufficient, because the information was said to have come from one of the officers of government; where it was not thought worth while to send for that person before the House, and to examine into the truth or falsity of the charge? But the justice to which he appeals, is that which reigns supreme within these walls;—in form celestial;—in nature divine. Her smiles he will not court;—her frowns he does not dread—She is the protectress of innocence; and if that has appeared, justice will pronounce WELL DONE THOU GOOD AND FAITHFUL SERVANT.

 *The Editor is under the necessity of recording, that the last Speaker was, to all appearance, in a sick and weakly state during the time in which he spoke for his client.*

Same Day.

Mr. INGERSOLL spoke as follows—

*Mr. Speaker, and
Gentlemen of the Senate,*

THE honorable but arduous task of concluding the arguments falls to my lot. I have to lament the disparity between my abilities and the magnitude of this business; the latter circumstance I doubt not however will secure me your best attention.

There

There are circumstances in this *cause* sufficient to excite the curiosity of the most dull, and to affect the feelings of those least attentive to the interest of the community.

More than 60,000 dollars have been issued from your Treasury, in stock of the United States. The expected compensation cannot be obtained; and if it could, it would be on terms that would render the acquisition, no gain; and the Comptroller-General, your confidential agent, has gained more than £. 5000 by the transaction.

A transaction so injurious to the commonwealth and derogatory to the character of the defendant, requires a discussion. The reputation of the state, and character of the defendant, are implicated in this investigation; the enquiry is of great importance, as it respects the defendant, or the conduct of the Assembly. If the House of Representatives made use of expressions authorising what has been done, let their intention have been what it might, the fault is imputable to them *alone*. It is necessary, the import of their language should be known; or, if the Comptroller-General managed his official duty with art and design, and misconstrued laws to serve his private emolument, he ought to be the object of public disapprobation.

Whether, therefore, you consider the defendant, or the nature of the subject, no place can be so proper for the investigation as the Senate, inasmuch as character and station can have no weight before this high tribunal. The result of experience induced our ancestors, in another country, to prefer trials by impeachments to the ordinary tribunals, to prevent a defect of justice, as the influence of the accused often bias and sway the minds of a jury. Some pains have been taken by the counsel for the defendant to prejudice the Senate against this mode of proceeding. They say this ought to be referred to courts of justice! One gentleman said, "popular bodies are easily warped by an artful individual, when he meditates the ruin of his neighbour."

And the gentleman who spoke last attributes it to a gratification of humour.

I do not recollect in *England* any abuse of this process; a salutary use hath been made of it in this country. In the United States, and in the different states, we find, when they reject bills of attainder, they adopt the mode of trials by impeachment.

I presume every Senator hearing me perfectly understands the different kinds of debts.

Funded debt includes certificates issued for services or supplies on Continental account, not including Depreciation certificates issued for the depreciation of the pay of the *Pennsylvania* line. The Act of the 21st of March 1783 makes the distinction between *funded* and *unfunded* depreciation certificates. When the depreciation certificates were originally issued, they were only funded in the Land-office, and on forfeited estates; these funds were found insufficient to keep them from depreciating; the excise was therefore per Act last alluded to, appropriated to those not alienated. Hence the distinction. Now, the unfunded debt is an object of our enquiry. This debt, strictly speaking, originated lately, had been issued on Continental account, and unconnected with this cause, being contracted between the individuals and the state; and although contracted on Continental account, they were state debts; the creditors had no other debtor but the state, and being possessed of 3 per cent. stock of the United States sufficient to redeem and pay off this debt, the law of the 10th of April 1792, whose meaning we are endeavouring to ascertain, was passed.

It may also be proper here to mention that the amount of the New-Loans was about five millions of dollars, that £. 118,470 : 6 : 6 had been redeemed, and that the remainder had been reduced by exchanges to the sum of £. 50,000. and no doubt had been entertained but that the whole would be exchanged without the expence of a single farthing to the state.

The first great question of the cause now offered for consideration :

consideration : What debts were redeemable under the Act of the 10th of April 1792 ?

I answer in the words of the law, 1st. Certificates on which an interest of 6 per cent. was payable annually : 2d. 6 per cent. purparts. 3d. 3 per cent. purparts ; and, 4th. Dollar-money. As matter of explanation I must here imitate the example of the counsel for the defendant, by referring to the Journals to ascertain the law. (Mr. *Ingersoll* then read the report of the committee of ways and means of the 22d of February 1792, page 157, in which the debts to be redeemed are stated ; and that those under the sixth section were only to be redeemed on condition Congress should again open the loan. Mr. *Ingersoll* also enumerated the certificates on which the state were paying interest ; that New-Loans were none of those mentioned in that section, which was contrary to the defendant's position, page 161. The committee contemplate the event of opening the loan, and declare on what grounds they will place unfunded depreciation. In page 160 the amount of the debt subscribable is carried out £.73,935 3 : 2. Mr. *Ingersoll* then read the report of the Comptroller-General of the 30th November 1791 ; in which he mentioned the debt which was entitled to purparts, and which excludes Unfunded Depreciation and New-Loan certificates ; and observed that it was clear that the committee of ways and means did not consider the New-Loans as a state debt, and they did not forget all the debts, for they enumerated the several kinds.)

In page 188 of the same minutes the report was read the second time, and no alteration was made. The same idea is preserved in the Act as it is in the report. It is apparent the Legislature did not contemplate New-Loans as a subsisting debt. I will only refer to the rules for construing and expounding statutes. It is a maxim in the construction, *hæret in litera, hæret in cortice*, that the life of a statute does not consist in the words but in the sense and meaning of it ; that general words of statutes shall receive a particular interpretation

tion when the intent of the maker is particular; that things out of the letter may be within the intent, and things within the letter may be without the intent; that the intent is to be collected sometimes by considering the cause of making the Act, sometimes by comparing one part of the Act with the other, and sometimes by foreign circumstances. General words in an Act are not to be construed to extend to what is repealed or annulled by previous Acts, such constructions ought always to be made, that one part of the Act may agree with another: Finally, an Act of Parliament as a last will is to be construed by the intention of the maker, that one part of it is to expound and explain the other.

I will shew that all their arguments refer back to a literal meaning, and that it is as improbable that the sick sailor mentioned in 1st volume of *Blackstone*, (page 61) should be entitled to the property as that the New-Loan certificates should be within the provision of the law of the 10th April 1792. It is universally acknowledged that the ship and lading did not in the last instance belong to the sick passenger, nor could it be within the meaning of the statute. So we say in this case, the New-Loans could not be within the purview of the Act, so that they must be eventually paid. The idea was never suggested that interest must have been paid at the Treasury on five millions of dollars, of which there remained about fifty thousand pounds unexchanged. No man entertained a doubt but that the whole sum should have been exchanged in a short time. Why then should an expence of 20 or 25 per cent. be incurred, when the whole might be exchanged and in a very little time no New-Loans would be remaining?

It hath been stated by Mr. *Morgan*, that if the Act was to have been construed literally, *Pennsylvania*, would have to redeem all the debts of the several States in the Union. True; but does not this shew that a literal construction is inadmissible, for then the debt of *Pennsylvania*, not owing on continental account would
be

be also redeemable. This shews the words *State debt* were used in an appropriate, & not a general sense. How then are the New-Loan certificates noticed? Is there a law or resolution of the General Assembly? Is there a report of the Committees of ways or means? Is there an address from the Governor to the Legislature? Is there a report from the Comptroller-General himself, recognizing them as a debt or giving any intimation that the State meant to redeem them, from the passing of the Act of March 1789 to the passing of the Act of 10th April 1792? If therefore the Legislature had received no account for three years of the state of the exchanges or what proportion of them were out: When, then, the whole system is changed, without a line written or a word spoken on the subject by the Comptroller or Register-General, the whole business being unknown to the Assembly, what have they done?

Thus far we agree, that on the 27th of March 1789 the Legislature declared, saying, we will not pay the New-Loan certificates, we will return the continental ones, you must look to Congress for your pay. The Legislature of 1789 made this declaration, when did they declare a different sentiment? Why, Sir, the counsel for the defendant allege, that all on a sudden without a single word said or written about it, on the 10th of April 1792, the Legislature provided a fund commensurate with the objects to be redeemed? Is it to be supposed that they would extend the redemption without *enlarging* the fund? Would they abandon their prudent plan to open their arms so wide as to embrace even old Continental bills of credit, and this even without being furnished with an estimate of the cost?—(Mr. Ingersoll then read the 2d section of the Act of 10th of April.)

As it appears the first leading motive with the Legislature was to get rid of their debts, what reason can be given why we should not pursue the same idea thro', and apply the same motives? The Legislature did not undertake to redeem all that are subscribable—In the law of the 9th April 1791 the State debts are assumable, altho' not redeemable,

deemable, the unfunded debt is mentioned by the committee on ways and means as subscribable, altho' not redeemable, and it is payable at 20*s.* in the pound, while its only receivable at 16*s.*—Their only intent was to compel a subscription of the debt they meant to redeem, and therefore they imposed it on the holders as a consideration, that they should subscribe. Therefore if our construction is adopted, the system is complete and consistent; if on the other hand the defendant's construction should prevail, there is a fund in one, and none in the other. Here was a condition imposed as necessary to a redemption, you shall subscribe to the loan, and assign to the state treasurer for the use of the commonwealth; the legislature presuming that they had provided a fund, directed an order to be drawn by the Governor on the Treasurer who shall immediately pay, &c.—

Consider for a moment the consequences. If the New-Loans were included, the amount indefinite, what a predicament would the Legislature be involved in. Their plea is extravagant, their only resource is the fund for claims and improvements, this fund was restricted to £.10,000 and £.5000 of that were annually appropriated for the improvement of roads. They have therefore put a construction on this act that would dishonor the State, dishonor the first Magistrate; the consequences of redeeming the New-Loans without providing funds would manifest the extreme ignorance and inconsideration of the Legislature—Why adopt a construction whose consequences are so absurd, so extravagant? They say, the State shall redeem whatever Congress will assume, shall Congress assume, because the state will redeem? Does Congress assume the debts, which the state will not pay? *They will not.*

It cannot be pretended that the redemption law of the 10th of April, 1792, created a debt; the New-Loans were excluded from redemption by the Act of 27th March 1789, there the Legislature declare the New-Loans shall never be redeemed by us; we will not redeem them otherwise than by an exchange; does
Congress

Congress say, they will assume, what *Pennsylvania* says, she will not redeem. If the New-Loans are not redeemable by the State, they are not assumable by Congress. Their construction will not do, except they can shew the will of the Legislature fully expressed since the 27th of March 1789; at that time no divisions of parties prevailed, as they did when the Act of the 10th April, 1792, was passed. Is it to be imagined, that they would leave it to Congress to say, what debts *Pennsylvania* was to pay?

No, Mr. Speaker, we are to take it upon the existing acts; from the complexion of the house at that time, it is presumed that they would not throw themselves into the power of Congress. In the official statements of the Comptroller-General to the Legislature, in which he included all the debts of the commonwealth, he expressly states these New-Loans as excluded by law from redemption. I confess, I thought these few observations would have been sufficient for minds open to conviction, in as much as all parties acquiesced in the Act of 1789; no objections were made to it, nor were any difficulties started; all parties concurred, when the state had declared her will, and none referred to the New-Loans—strange, to hear curious disputes about the constitution,—for in August the same year the creditors applied to Congress as to their only hope. As much pains have been taken to obscure what is in itself plain and self-evident, and lest I should be thought to have neglected my duty, I am obliged to be more particular, I will therefore proceed to shew—

1st. *The New-Loan certificates were not assumable.*

2dly. *They were not redeemable.*

3dly. *That the defendant knowing that they were neither assumable, nor redeemable, from interested motives, acting as Comptroller-General, to derive a benefit to himself to the injury of the State, certified them to be assumable, and redeemable in some instances; and in others procured them to be assumed, and certified they were redeemable.*

✂ The express arrived this evening with the dispatches from the Commissioners appointed to take *H. Hamilton's* deposition on interrogatories.—Which see from page 487 to page 496.

Adjourned.

In the minutes of the House of Representatives the following entry is recorded :—

“ In conformity to the resolutions of the 25th February last, the House resolved itself into a committee of the whole, in order to attend the trial of *John Nicholson*, Comptroller-General.

“ The Speaker quitted the chair and *Mr. Montgomery* was placed therein.

“ The committee of the whole then proceeded to the Senate-chamber for the purpose aforesaid.

“ After some time,

“ The committee of the whole returned to their own chamber.

“ The Chairman left the chair, and the Speaker resumed it.

“ The Chairman then reported that the committee of the whole had attended the trial of *John Nicholson*, Comptroller-General.

“ The committee appointed to manage the trial of the articles of impeachment against *John Nicholson*, Comptroller-General, reported further progress, and that the Senate would proceed in the further hearing of the counsel at ten o'clock on Monday next, in the forenoon.”

Twenty-second day of the trial.

M O N D A Y, MARCH 24.

Mr. INGERSOLL, in continuation.

*Mr. Speaker, and
Gentlemen of the Senate,*

MY first position is, that the New-Loan certificates were not assumable; and it is worthy of attention to consider the manner in which it hath been brought before the Senate. The Comptroller-General, a principal officer of government is endeavouring to bring forward a law consigned to everlasting oblivion; to assist his views, he is trying to give a construction to the Act of 10th of April, 1792, a construction which did not prevail at that time, and it is but of late that the discovery was made.

If laws are to be construed in this manner the best plan may be rendered abortive; but it hath been shewn that the Legislature have left on their records an indubitable evidence that they considered the Act of 1789 as perfectly annihilating the certificates in question. They bore an interest of 6 per cent. for four years, if they were State debts they must have borne interest until paid off; why then were they omitted in the enumeration of the debts of the state? Why were they omitted in the sixth section if they were subscribable as a debt of *Pennsylvania*? Would it then be contended as an operation of the law, or was this inferrable from the Comptroller-General's report of December 1790—Wherein he adds that he was then stating all the debts of the commonwealth on which interest was payable by the state, and adds 600l. interest on the New-Loans being a part of the four year's interest—That the Comptroller-General is wrong, it is sufficient to say, that if

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they are assumable they must be within the assumption of Congress. If I can satisfy the Senate that these debts are not within the assumption of Congress, if so, and the Comptroller is defeated, is it a sufficient apology for him to say? "*Such was my opinion. I was mistaken.*" A public officer ought to tread on sure ground; gross negligence and inattention is fraud; extravagant rashness ought to be checked in any well regulated commonwealth.

Although it is his fault then if it shall pass unnoticed now, the blame will rest elsewhere. How does it appear; is it not clear proof that they are not assumable? The Secretary of the Treasury hath declared to the world they are not assumable, the commissioners for settling the accounts of the United States with the individual States, have declared the same opinion, because the New-Loans are not charged to Congress in the account of this State, therefore not considered as certificates issued for services or supplies, *Pennsylvania* cannot obtain certificates from Congress, if she could, she must refund the amount in continental certificates, and pay the same in addition; the United States do not undertake to assume and charge the state with debts, which they have refused to pay. The Attorney-General of the United States declared them not assumable, but that firm texture of mind which one of the counsel for the defendant hath attributed to him is hardly a sufficient apology. If this had taken place, the whole subscription would have been lost to the state, I will shew this to mathematical demonstration. The amount of the subscription of *Pennsylvania* was 2,200,000 dollars, when the state had subscribed her quota 65,000 dollars, Mr. *Nicholson's* subscription would have been charged to her until she had delivered continental certificates to that amount, besides the difference between 16 and 20 shillings in the pound. But it will be asked, why does not this mistake happen in all the other subscriptions, because *Pennsylvania* previously charged the same amount to Congress, and the only difference to *Pennsyl-*

vania is the difference between the balance of cash and stock; but we are told that we can charge Congress with every thing of this kind, I answer, let any gentleman look at the books, and there is not a single New-Loan certificate charged to them, but the whole is sunk at the loss of this state. Either the Comptroller-General knew this would not be received, or what is most probable that he knew it was not payable out of the public Treasury, or if payable, it must have been sunk as before.

But, again, it may be said that all these mistakes might be rectified, and the time for the settlement might be extended by Congress, I answer, that it is not expectable that such an indulgence could be granted, such a privilege might be obtained by an humble petition to Congress. In this critical situation she could not obtain a single farthing of stock until she lodged her continental certificates for it.

But if it is necessary to recur to the words of the law, we will see if Congress had countenanced this extravagant idea, we will see that Congress did not assume the debts of *Pennsylvania* which she did not determine to redeem, they say, they will assume the debts of the different states, but will they determine for the states their debts, or say, they'll pay what the states say *they'll* not pay. (Mr. *Ingersoll* then read the 13th section of the law of Congress, of August 4, 1790.) Here, sir, is certainly no intimation that Congress meant to determine what that debt was. (The letter page 81-2 was then read and commented on.) This is perfectly consistent with the law, and the Attorney-General of the United States construes the Act exactly as I do. If any dispute should arise between an individual and the state of *Pennsylvania*, Congress will not undertake to determine. "*It is nothing to us, settle it among yourselves, we will not inter-meddle.*" From the character and situation of the writer of this letter we must acknowledge that he determines the question of assumability, not redeemability. Now, Sir, we have the opinion of the Secretary of the Treasury, and the declaration of the Attorney-General, the first law

law-officer and the United States, that if there be an Act *in form of a law*, declaring them not payable, they are not assumable. Have any dispute arisen that there is such a law? The law is dated 1 April 1790, page 790, this shews the Legislature did not consider the continental certificates the property of the state, until the New-Loans were redeemed. But again, we are told that Congress speaks of the New-Loans as assumable; this is strange, is it improper that Congress should provide not to assume twice the same debt? therefore they have introduced a clause which the Secretary by his construction hath rendered intelligible. (Mr. *Ingersoll* then read the 18th section of the Act of Congress of August 4, 1790.)

Now, Sir, there is not a syllable in this section about surrendering up the counterparts to the United States; therefore agreeably to the literal common construction, had a New-Loan holder subscribed 6d. *Pennsylvania* must restore the same, or the subscription on her account must be suspended; it is however true, that the Secretary of the Treasury hath put a much more rational construction on the Act. If you subscribe £.100 of New-Loans to the loan, an hundred pounds of Continental certificates must be surrendered to the United States, both certificates being evidences of one debt. But is that determining what are state debts, and what not? that would be to encourage the New-Loan holders to controvert the Secretary's construction. If there are New Loans issued and are subscribed, then you must deliver up an equal amount of Continental certificates. The Secretary of the Treasury tells you in his letter (page 76-7-8-9, which Mr. *Ingersoll* read and commented upon.) It was presented to the Secretary as if the Act of 1786 had not been repealed. No doubts were ever suggested *to him* that there had been any law declaring them no debt.

The business lay in this manner until August 21, 1793, when the Secretary wrote to the Governor (page 218-9, which was likewise read and commented upon by him.) Here were six months at least, from February

ary to August, a sufficient time to make up their mind, and then the New-Loans were rejected totally as not subscribable. It was the closing of the account with the state of *Pennsylvania* which excluded them, and not the lapse of time. Now, what doubt remains? It said, that it was not stated to Mr. *Hamilton* in a prominent point of view, that the law of 1789 was passed after the Federal Constitution was adopted. I ask, would it affect the business if it had? O heavens! had we no principles of legislation until 1788 and 1789? Were we born yesterday? Were we novices? Let us not entertain an idea so degrading. If we entered into a contract before that period, could we abrogate that contract? It is true the United States in this as well as in other respects decline to meddle with contracts; but, Sir, were not the same principles held before that time? Yes; they were argued at the bar, and in the House of Representatives; and the House decided they might constitutionally repeal the law of 1786. The Secretary of the Treasury says, if you have a difference, settle it between yourselves. The Judiciary of the United States have no right to decide between *Pennsylvania* and her own citizens; I cannot see with what good reasons they adduce a comparison respecting the suability of states but in regard of their being existing debts. Mr. *Randolph* tells us, it is enough that your laws do not recognize them as debts. But to put this in a more prominent point of view, the Secretary of the Treasury, a member of the Grand Convention, a gentleman so acute and enlightened, can it be supposed that it escaped him? Nay, the Attorney-General and the Commissioners of accounts!

Does not the history of the assumption shew their sense? The reasons no more apply to the New-Loan certificates than the most remote subject which the mind of man can contemplate. (Mr. *Ingersoll* then read 3d vol. debates of Congress, page 41, 485.) Were the New-Loan holders clamorous at the door of Congress? What was it to the New-Loan creditors in *Pennsylvania*

via that *Shays* made his appearance in *Massachusetts*? Were not the five millions exchanging without a murmur, and reduced to fifty thousand pounds? Was the principal or interest then payable? We have it from our learned opponents themselves that the funds were withdrawn. We will by and by consider that that debt was never to be paid by this state, and unless they should be lost or by some other casualty, not a New-Loan would have been out in the course of time allotted for exchanging them. There is no reason to believe that Congress should be induced to pay the New-Loans, for the United States do not any where say, we will pay that debt whether *Pennsylvania* will redeem it or not; but in cases where the creditor could call on the state, it never entered into their contemplation to assume such debts. No idea is suggested that Congress would pay less than that mentioned on the face of their contract, and of course no reason to believe Congress would assume them. But we have it in proof that all the confidential officers of the United States were directed to keep clear of them, if they wanted the due recognition of the state as existing debts.

Then, Sir, the laws of *Pennsylvania* are the test to determine whether they were or were not subscribable. I will therefore ask, whether the New-Loans are recognized as an existing debt on or about the 10th of April 1792, and whether they were payable at that present, or at a future period, or at an indefinite time? This brings me to the laborious task of shewing by tracing through the laws, what I think the Senate have already seen, that the law of 1789 rendered them no longer a debt or evidence of a debt.

It hath been said, and I subscribe to it, that statutes must not be judged of by the opinions of members, but must be expounded by the common and usual rules. Adhering then to this principle, it will not be difficult to demonstrate, that after the passing of the Act of March 27, 1789, they were no longer a debt or evidence of a debt due by the state. In the first place it
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is necessary to know what the law meant; then let us try it by the Constitution, and see whether it will abide that test. (Mr. *Ingersoll* then read the title.) The title of this law is prepared, and affixed after the whole scope is gone through, and the law is for repealing a former one, and by that, to repeal the payment of principal and interest. Passing on then, in order to know the reasons, and of consequence the extent of the repeal, we must suppose the law consonant with the intention and declared views of the Legislature without examining them. If the law of 1786 was not temporary, and this law says so, it is a coincident circumstance, and must be so taken. (Mr. *Ingersoll* then read the preamble.)

The aggregate fund was the foundation of the contract, and the leading circumstance; now the motive comes—"It is reasonable and just;" this is putting the Acts of 1785 and 1786 on the same footing, and all agree that the former provision was temporary. Having assigned these reasons they proceed to the enacting clause (first section then read.) This, it is said was only withdrawing the funds. Were there any funds by the Act of 1786? The funds were created by the Act of 1785: No. Therefore, there is something more; they speak of more Acts than one. The reason assigned by the counsel for the defendant, the most inapplicable of all others, that is, suspension and delay. Was this a time to seek for suspension, when the state was receiving the sums due her from the Continent? She then had the immense fund of a Land-office, the arts, manufactures and agriculture flourishing, this forsooth the time when *Pennsylvania* like a pauper is praying time of payment as represented by the opposite party! If she was impressed with an idea so base as to have no other motive for subtracting the funds, which we must never suppose, and unless she was infatuated, she must instantly have substituted other funds in lieu of them taken away. I have said that the recital if true, was in fact what repealed this law. It is sufficient

cient for my purpose, if in their understanding they entertained the same view, it had the same effect on them, whether well or ill founded. When they speak of repealing the law of 1785 as well as the law of 1786, they apply it to the principal and interest; when they make the provision temporary, they apply that to the interest only, but it is not so; there is not a single letter in the law which makes the distinction. I think it safer to take their view from the Acts themselves, than at second hand. (Mr. *Ingersoll* then read the section.) As the funds were temporary the provision ceased also. If the provision will cease, will not the funds also cease? Is it possible to wink so hard as not to see? What relief is to remain if the funds established by the Acts of 1785 and 1786 are to cease? If the tedious road so often trod must again be travelled over, although I do not think it necessary, I think these plausible reasons for withdrawing the funds; foreign as well as domestic creditors were to be paid. This House cannot forget the difference between that and the present day. A dissolution of the Confederacy was apprehended, that the debts of the Union would never be discharged, or at least not until a very distant period, each state to take care of its own people. Under this aspect of public affairs, the Act of 16th of March 1785, the first law on this subject, was passed, to continue until Congress should provide; notwithstanding these aspersions, it reflects eternal honour on the authors of it. She used the funds which were not applied to the creditors generally. This was not her fault—it was attributable to some of the eastern states, but *Pennsylvania* was never the original debtor; she was only surety for the United States. Why not hunt the lion more generously? Why search up these sleeping Acts?

The Legislature of 1785 instead of seeking an excuse to evade the requisitions of Congress, contributed every farthing required of them. It can be shewn by the statements of the defendant himself, that there was a
balance

balance in her favour in specie, and in indents, necessarily possessing as she did so large a portion of certificates; the law of 1785 provides for creditors of *Pennsylvania*, and also for the requisitions to Congress. The manner how this payment was made thro' the agency of the continental officers hath been already sufficiently explained. Congress was afraid lest the excise would be suspended, and for fear of offending foreign states or foreign creditors in Sept. 1785, for the reasons before mentioned, passed their resolution, 11 Volume, page 328-9, to defeat the operation of that law, it will appear that it was not a complaint that the requisitions were not complied with; but that notwithstanding they should not pay the citizen creditors of any State in preference to the foreign creditors: The honorable Senate, no doubt, recollect the difference between that time and the present day.

I shall endeavour to shew, altho' I do not think it necessary, that the Act of 1786 was intended as a temporary relief only. To understand these laws, it is necessary to be reminded of the situation of the United States, the debilitated State of the confederacy, and the distressed situation of the public creditors. A dissolution of the confederacy was apprehended, that the debts of the Union would never be discharged, or, at least until a very distant period.

Under this aspect of public affairs the first law of this subject was passed on the 16th March 1785, and to continue until Congress should provide; this Act provides for the annual requisitions of Congress, besides taking care of its own people, the creditor citizens of *Pennsylvania*. Notwithstanding the reflections against this law, it reflects eternal honor on the authors of it, she used the funds which went not to the creditors generally, the delinquency was not attributed to her, but to the Eastern States; she never was the original debtor, she was only surety, and not the principal; it was her duty to bring it forward in some manner to make it a charge against the United States, the object was considered

the same, altho' the mode of obtaining it was different, then when the principal had been ready to pay why should we hunt up these sleeping Acts with a view to embarrass this business? Altho' Congress admitted the purity of the motives which actuated *Pennsylvania*, she nevertheless resolved that any interest which should be paid after the first of January, 1786, should not be allowed.

But as Congress defeated the operations of the Act of 1785, it became necessary to carry that law into effect, in such a manner, as to make it a charge against the United States; this, Sir, was the whole motive, altho' the mode of doing the business was different, the substance was the same; and the better to save appearances, the certificates purported to be for so much money received on loan; did this bring the New-Loans within the term of State debts? *State debt* has a definite meaning, including debts on a continental account, and debts contracted on her own proper account. Yet, as every person well knew, a definite meaning, when the creditor had only recourse to the state, and not to Congress. The defendant's counsel have been diametrically opposite on this subject; Congress would never have complained of the law of 1786 had the Legislature confined themselves to the redemption of their proper state debt, and yet we find them deputing a committee from their body to endeavour to effect the destruction of the law of 1786, (see report, page 319, 320 of this.) What was the reasoning of the state on that occasion? The Legislature had no design to separate the contract from the fund, they considered the fund as the essence of the contract, they say, we are ready to pay our quota, and to comply with our requisitions, and until that is done we cannot withdraw the funds, the law of 1786 must remain until a general provision is made by Congress—When the period had arrived, mentioned in the Act of 1785, so far as it respects the payment of principal or interest of the New-Loan debt, a repeal took place; this we contend

tend had extinguished the debt, our opponents insist it only withdrew the funds.

This shews the compact was not to be final and complete until all the states should agree. Here are principles in which we and our opponents agree; let us see how far. Can't you, says Congress, withdraw the funds? "*Withdraw the funds*," says the Assembly spurning at the idea, and leave our contract a *caput mortuum*; at present we cannot withdraw these funds without substituting others in their place, but when halcyon days will come, then we will withdraw them; you will know that taking these funds would be leaving our own creditors disappointed; this is perfectly consistent, and agreeable to our construction, the measure is not precipitate; (other paragraphs of the report was then read.) I will not prostitute the dignity of my profession by evasion, had I understood it as the defendant's counsel, I would not have attempted to reconcile it with the constitution, or the eternal rules of justice. I admit the intention of the state was to make a provision commensurate with the funds.—But I contend here as I did elsewhere, that they did not separate the contract from the fund, nor did the state continue to owe after they were discharged from the payment.

Therefore I contend, that when the period had arrived, and Congress were under an efficient government, it then became necessary for *Pennsylvania* to "modify the payment." Grant me this and it leads to all that I contend for; for it is necessary to shew that the funds made use of on this occasion were not taken after they had been given up to Congress. (Mr. Ingersoll then read some passages from the 8th volume of the Journals of Congress, page 187, to shew that the execution of the resolutions were expressly suspended until they should be acceded to by every state in the Union.)

Pennsylvania, in September 23, 1783, complied with the requisition, with a proviso that the Act was not to take effect until each state in the Union had passed similar laws. In page 194, *Pennsylvania* by a long address sympathized

sympathized with Congress, and as Mr. *Lewis* observed, she copied the resolution into her Act, and concluded that it should be suspended until the twelve other states should comply with the same. Now where is the foundation for reproach? How did the state by the Act of 1786 pass an Act which was void? No funds were taken away from Congress; no requisitions were neglected; but they were anticipated. The Comptroller's own statements for December 6, 1786—November 3, 1787, and November 4, 1788, shew that the state complied punctually with all the requisitions of Congress.

On the 27th July 1786 there remained a balance in the Treasury of *Pennsylvania* of above sixty thousand dollars, and the Comptroller adds, that a balance upwards of 30,000 dollars remained due to her in October 1787; not to mention the amount of indents, of which I need not take up your time to shew it; for she always had indents enough. It is however true, there was another requisition then made, but never complied with, that is, two year's interest to the foreign creditors, and one year's ditto to domestic creditors, who were citizens. This I will dismiss, as no other state complied, the requisition being unreasonable.

Is *Pennsylvania* then criminal? she was eminently in advance before 1786. Surely there is no reason for suggesting that the law of 1786 was void with respect to the funds. (Mr. *Morris*, the Speaker of the Senate, interrupted Mr. *Ingersoll*, and suggested, that the enquiry was, whether "the form of the certificates binds the state, and if it is admitted a debt by the Act of 1786, whether it makes the obligation permanent, this state consenting by that Act to be a creditor of the Union, no doubts could preclude the creditors from their rights." Mr. *Ingersoll* replied, My answer to that will be this, If I receive an obligation payable to bearer, I agree, that I am not to look farther than the face of the writing, but these certificates refer to the Act, and it is as much an intimation to the holders of the
nature

nature of the contract, as if the whole Act had been transcribed and embodied into them, because they are referred to the Act. Mr. *Ingersoll* then read the form of a New-Loan certificate, see page 317.)

As to the observations made respecting the minutes of Council of Feb. 3, 1785, these refer to the law of 1785, which is clearly of a temporary nature, and the law itself expresses it so. It contradicts the defendant's leading principles and contends that unfunding the debt is a violation of the contract; the one cannot cease, unless the other ceases; the fund and obligation must go together; these, Sir, are some of the arguments applied to the Act of 1785, and yet that law speaks a language which no sophistry can confound. (Mr. *Ingersoll* then read the 18th section of that law, page 467.) Now, Sir, these reasonings of the Supreme Executive Council destroy the idea, that contracts may exist without funds. I do not know why these were read unless to pass censure on the Assembly of 1785.

How does this agree with the reasoning imputed to the Assembly of 1789? The funds are withdrawn, and no others are substituted; but I have said, and it must be again noticed, altho' they have given a reason for withdrawing the funds at March 1789, yet no reasons are given for cancelling the debt, was it not for *not paying* the debt? A CURIOUS DEBT INDEED! It is agreed, that the funds were withdrawn, no other funds were substituted or promised, and the state were not compellable to give any, depending altogether on will and pleasure, not obligatory in conscience, neither moral nor political obligation, *a strange debt!* a contract never to be executed cannot be a debt. This puts me in mind of *Martin* and *Crambe*;—*Crambe* swore that he could frame a conception of a Lord-Mayor not only without his horse, gown and gold chain, but even without stature, feature, colour, hands, head, feet, or any body, which he supposed was the *abstract* of a Lord-Mayor.

A certificate remains as blank paper, is it obligatory
because

because it enables the possessor to come to the Comptroller-General and to get back his continental certificate? Is it a debt payable at the present time, or at any future period? Does not a debt exist *ex vi termini*? Does it not imply an obligation? True it does, if "desirous" or optional, a choice; yes, the law gives a choice, but it is *Hobson's* choice, that or none, and when one says, it is not to be paid, it is in other words, saying "*I am not indebted*;" in name, optional; in effect, obligatory.

"*Directs and secures*,"—directing and securing were included in the assumption, it was that and more too, the certificate itself secured the debt, as they allege, but the debt was not secured, there existed no obligation to provide a fund, what assume a debt not payable? that is, in other words to say, that the commonwealth is not in debt.

It was attempted to distinguish between principal and interest, and that temporary funds only apply to interest. Does the Act shew it in this manner? Do the resolutions point it out thus? hath this circumstance escaped the notice of the Assembly?—No—But the minutes shew that the business was pointedly brought before them; first, the interest was only attended to, then it was postponed, and the clause was added, every Act or Acts directing or securing the payment of principal and interest. (Mr. *Ingersoll* then read the motion, page 184.) Here then the Assembly have brought the principal and interest fully into view, this shews the Legislature meant the principal also, as they did not design to distinguish. Now as to the interest not to be perpetual, it was to be temporary, if Congress should provide; if not, it was to be final. Mr. *Lewis* observed that *temporary* was meant to be *partial*; but no words are less synonymous than *temporary* and *partial*. They meant the payment of principal and interest until Congress should provide.

Much reliance hath been placed on the word "*many*," this word was introduced without any pointed attention, there

there was no use for it, the clause first stood without it, and regarded only the interest. (Mr. Ingersoll then read the minutes to the Act of 10th April 1792.) This was only necessary as it regarded the equalizing the interest and the exchange. Another reason offers for consideration, this funding system in *Pennsylvania* was the symbol of party, and was looked upon by some as sound policy, by others it was looked upon the very reverse. At the time this law passed, Congress had not begun to pass their laws, many supposed the Act of 1789 might be repealed, and of consequence the law of 1785 might be revived with all the debt, of course they provided for the exchange, and with a view to get rid of the question left the choice with the party, it being then not known what provision Congress would make.

But, these things, like general rules, have their exceptions: Bills of credit are barred by particular Acts to come forward as contracts, which the state cannot controul. Contracts are destroyed when the party is excused from carrying it into effect; therefore the New-Loan holders on agreeing to the Constitution of the United States, and withdrawing the funds, discharges the state from the performance of the contract. There is no analogy between these and the *North-Carolina* certificates; there they were issued in collusion, and not for Continental certificates; there they are not binding on that state; reasons of that kind may occur here, where the certificates are only temporary in their duration. How will the contracts of the United States stand this test? Are not the continental bills contracts? Are New-Loans contracts? Are they not continually reducing by exchanges? Are the bills of credit of *Pennsylvania* to revive as contracts? These particulars shew that the principle was established, and as old as government, that contracts must be abided by, and held sacred, and that some of them can be controuled?

If I enter into a contract with my neighbour, and he prevents me from doing part, shall I by that be compelled to do another part? Was there ever a circumstance

cumstance where the party is excused from carrying it into effect, if the contract remained irrevocable? The contract ceases wholly, or remains altogether to be carried into effect. How were we circumstanced in 1789? Why, the social compact takes out of the hands of the state certain funds. The New-Loan holders represented in Convention, and acquiescing to the adoption of the Federal Constitution, agreed to the transaction and excused the Assembly from a performance of their former agreement; and it is conceded that *Pennsylvania* by good faith might surrender these funds, and were under no obligation to substitute others. Is this faith? Is this justice? Is this a good principle? Where is the substance or reason for this procedure? Why! either the funds are pledged for ever, or the contract is temporary. I mean by this, either these funds must remain or others must be substituted in their room.

If I had understood the Act of 1789 as contended for by the defendant, I would never have appeared here. To say that the Act of 1786 was perpetual and not temporary, and yet to say *Pennsylvania* may take away those and not substitute others, is imputing to her such fraudulent inconsistency, that I cannot believe it.

Either the debt ceased to be such by the Act of March 1789, or the Assembly was bound by every principle of honour and justice to substitute other funds immediately.

There is a short test to try this. If the funds are taken away, the interest at your Treasury is not paid half yearly. If the contract is not affected, the holders may always draw the interest. (Mr. *Ingersoll* then read the form of a New-Loan certificate.) But they say the obligation remains; then let them turn to page 63, Act April, 1791, where they will find that the certificates come within the purport law of that date. (Part of the law then read, and a repetition of the calculation of the parts of stock as in page 329 of this.)

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If they were evidences of debt, they were payable under the Act of April 9, 1791, although it was never attempted to introduce them thereunder as redeemable. The Act for the relief of *Sarah Caldwell* only authorises a subscription of the Continental certificates in trust, in the domestic loan of Congress; and only amounts to putting her in the same situation as if she had New-Loans. There is no analogy between this case and that of the certificates of *North-Carolina*. Re-issuing the paper money was for the purpose of encouraging the exchange. It is disagreeable to have an obligation abroad, though it be paid. The holders of New-Loan certificates naturally wished not to exchange, as this was their interest; for £. 100 in New-Loans produced 6 per cent. interest; but if exchanged it only produced 3 per cent. This of course introduced the practice of encouraging the New-Loan holders to exchange their New-Loans for the Continental certificates. (Mr. *Ingersoll* then read the preamble and sundry passages of the law of the 7th of April 1791, to enforce his arguments, that the obligation was discharged although outstanding, and although it was not obligatory, the state wanted it to cease being in existence, in order to have the care and custody of her own property.)

It hath been suggested, that the state paid interest on certificates between September 1777 and March 1778, calculated on a reduced value, and charged Congress at the specie value. Trace the circumstances of public affairs, and you will find the repealing law was founded not on affected, but real necessity, and see if the period had not arrived, when the law of 1786 ceased.

The grand convention ended the 17th September 1787. *Pennsylvania* adopted the constitution the 13th December same year. The ninth state adopted it on the 21st of June 1789, and in July 1789 Congress passed a law imposing duties to operate the 1st of August; of consequence, they might well say, it "*would soon cease.*"

It is true the Assembly might have waited until the

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funds

funds were actually taken out of their hands by Congress, that they did not, was the principal cause of complaint with the New-Loan holders. Therefore the New-Loan debt ceased, and was no longer operative, but to get back the continental certificates, and the arrears of interest.

But, let us turn to the Act of 1786, and see what part of it will remain after the repeal. (Mr. *Ingersoll* then went over the different sections and clauses of that law, to point out the import of the words and the meaning of the Act, and concluded by observing that it was indifferent to him what time the Senate would adjourn to, but earnestly requested to have the privilege of finishing that evening.)

Adjourned to four o'clock same day.

In the minutes of the House of Representatives the following entry is recorded :—

“ In conformity to the resolutions of the 25th day of February last the House resolved itself into a committee of the whole in order to attend the trial of *John Nicholson*, Comptroller-General.

“ The Speaker quitted the chair and Mr. *Nevill* was placed therein.

“ The committee of the whole then proceeded to the Senate-chamber for the aforesaid purpose.

“ After some time,

“ The committee of the whole returned to their own chamber,

“ The Chairman left the chair, and the Speaker resumed it.

“ The Chairman then reported that the committee of the whole had attended the trial of *John Nicholson*, Comptroller-General.

“ The Committee appointed to manage the trial of the articles of impeachment against *John Nicholson*, Comptroller-General, reported further progress, and that the Senate had adjourned until four o'clock in the afternoon for the further hearing of the counsel.”

Same day, 4 o'clock. P. M.

THE Senate met as usual, the members of the House of Representatives in committee of the whole attending.

Mr. INGERSOLL, in continuation.

*Mr. Speaker, and
Gentlemen of the Senate,*

In addition to the observations made by me this forenoon, by which I have shewn that the debt was extinguished, a debt never to be paid principal or interest, and that this debt was not assumable, nor subscribable to the loan, after the passing of the Act of March 27, 1789, it will be recollected that the question for general enquiry and consideration, will be, whether under these circumstances was or was not this law constitutional? Congress will not consider the constitutionality of the law; it is a dispute between the holder and the state of *Pennsylvania*. She neither could nor will determine such disputes; it is sufficient that they ceased to be a debt; they are not assumable; the defendant is unwilling to meet the question; his counsel now urge that the law is unconstitutional: It is agreed the state might suspend the payment of interest, withdraw the funds and modify the payment of the principal.

The funds were a part of the contract, they acquired the credit, *they induced the loan*. The counsel for the defendant have conceded a principle which leads to all the consequences we deduce. *Pennsylvania* can alter the terms of her contract; the principles are established from which they can never retrieve themselves. The state of *Pennsylvania* has the same rights as a private person. My creditor prescribes an alteration on agreement; I cannot do it nor can he do it singly. If the state authorises to alter the contract, she may
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authorise the abolition of it. Will the gentlemen contend, that a conference had been held between the state of *Pennsylvania* and the holders of New-Loan certificates? The state speaks only by her laws, where the contract might be altered. The degree and extent of alteration must be left at discretion, subject only to a sense of right and wrong, and is therefore not a case within the Constitution. (Mr. *Ingersoll* read the 10th section of the first article of the Constitution.) The New-Loans are out of the spirit and letter of the Constitution of the United States; the law of 1789 impairs no contract. If it is out of the reach of the letter, it cannot be in the spirit.

Let us recollect the comments of my learned colleague from *Massachusetts* (Mr. *Dexter*) on the eternal principles of right and wrong obviously opposed to the principles of "perfidy," fraud and chicane, and I will not pretend to say how far it might stand in a court of judicature.

The limitation and discretion relative to such alterations are never to be ascertained by the constitution. The Comptroller-General's own plan of finance proposes a limitation that would not be consonant to the constitution. Shall my creditor say, unless I call at a certain time I cannot have payment at all, this is surely more repugnant to the constitution than any thing in the Act of 1789. Congress is also restricted in the exercise of their legislative power, a variation from the original contract is proposed by the Secretary of the Treasury in his plan for the redemption and funding the public debt, instead of whole 6 per cents. some are at 3 per cent. The same spirit of variation has induced the strained construction of the Act of the 10th of April 1792. The New-Loan creditors construing the Act as we do, had applied to Congress and remonstrated against the conduct of the Secretary, I do not design to cast any reflections on the Secretary, I am satisfied, he was impelled by the purest motives for the public good. To excuse therefore the conduct of

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an individual, which is at least excusable, ought to be our duty; but I expect to be able to shew that the New-Loan holders remonstrated to Congress against this deviation from the original contract.

But it should be remembered that the Comptroller as a member of the community, a holder of New-Loan debt, and a creditor of the United States dissolved in part the contract between *Pennsylvania* and her creditors by acceding to the adoption of the constitution of the United States; he has also acted for years as a servant of the public in the execution of this very act—no matter whether a man shews his mind from words or actions.

August 2, 1789, (see debates of Congress, 2 vol. page 280) the New-Loan holders applied to Congress, and in strong language they call them "*our only hope.*" Here, Mr. Speaker, you may preceive their silence, their acquiescence, O charming infancy! their silence first, then their application to Congress, and all this correspondence is to be no proof of their acquiescence! Five millions of dollars were all exchanged except fifty thousand pounds. The defendant purchased of persons who had waved their claims as they had acquiesced in the law; witness *Biddle* and *Oldden*; by their conduct they waved it; it is therefore possible they transferred their rights to the defendant, or that he derived it from them. The meaning of the law of 1789 cannot be doubted, but at any rate it is unreasonable to suppose that those who have acted under a title for a course of years in a community can impeach it. Is the agent at liberty to dispute the commission under which he had acted so long?

If, therefore, the New-Loans ceased to be a debt, they were not assumable, and there was no necessity for the certification of the defendant. Why then did the Comptroller-General certify them *genuine* and *assumable*, and then recognize them as debts, and pass them as assumable and redeemable? It is denied that the Comptroller-General certified New-Loans to be assumable, or if he did, it was but in a few instances, not
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in his own case, and not in his character as Comptroller-General. It is also said, that it is not alleged, he certified them *so*; that therefore the proof is insufficient, and the charge unsupported. I will shew that the articles of impeachment are sufficient in substance and form, and supported by the evidence. (Mr. *Ingersoll* then read the first article.) I have given notice to the defendant's counsel, that I would refer to observations well expressed by *Federalist*, 2d vol. page 210, on the propriety of impeachments—What is not criminal on an indictment is not so on an impeachment; the less certainty is requisite in the latter than in the former. Certifying in a few instances is as really criminal as in many, although not injurious in the same degree. If he certified to any, he is criminal. It hath been said, that he is not charged in the articles, to whom he certified, whether to the Loan-officer, to a private person, or to a man in the country; he is excused by not signing officially! If the Comptroller-General, not *John Nicholson* acting as such, certified New-Loans to be genuine and assumable, he well knew it was to the loss and risque of the commonwealth. It is said, that he did not add the title of his office, but only the initials of his name. I am sorry to find the defence of the Comptroller General resting on such flimsy subterfuges. Has not the subscribing the initials the same effect? is not the object the same? If so, is it different whether the initials are written or the whole name? Are not the reports to the Assembly signed in the same manner? And if he should have mislaid them he would be punished.

But it hath been said, that the evidence do not support the charge, and that he did not sign his own abstract *genuine* and *assumable*: If he certified for any one it is sufficiently proved. Let us examine how his own business was managed, a long roll in his own handwriting, and intended to make the same impression as if he had certified it *genuine* and *assumable*; How would Mr. *Smith* reason on this? Would he separate those abstracts

abstracts which were certified *genuine* and *assumable* from that in the Comptroller's own hand-writing? We find some circumstances in his subscription of a bad impression, which do not alleviate the charges, he subscribed in blank in the month of June, how was this filled up? Is he to sit on the watch in his office, that this blank subscription continues open to the 7th or 8th of July, then the blank is filled up and the receipt anti-dated to the 30th of June? Is not this conduct most exceptionable? Was not this done in his official capacity? If this is denied his correspondence on this subject must be forgotten! (Mr. *Ingersoll* then read the letter, page 215-6; ditto page 217; ditto page 96-7; ditto page 97-8 of this work, commenting as he went along, to prove that the defendant acted in his official capacity when he certified the abstracts *genuine* and *assumable*.)

It can therefore admit of no controversy that the Comptroller-General acted in his official capacity, we have proved he violated the law, the excuse must come from him, if no other excuse comes from them, but an error of judgment, *Humanum est errare*, an error of judgment is certainly no ground for an impeachment; but if facts are strong, and evidence conclusive, however painful it is to pronounce the sentence, it is inevitable; he must be declared guilty. We consider him as acting from improper motives, and it should be remembered that when we probe the secret motives, and fathom the sentiments of the heart, truth does not appear in matters of evidence which must necessarily end in probability only, with that resistless conviction with which it presides in the mathematical sciences, it is not to be expected that it should operate with resistless force.

But if after 1789 he states nothing of the New-Loan certificates as being a *State debt*, which before the passing of the Act of 1789 he uniformly and repeatedly did; if to go farther, from motives of private interest he has endeavoured to defeat the operations of a law, has taken money out of the treasury upon a pretended consideration,

consideration, then no one can hesitate and his guilt cannot be denied.

Did not the Comptroller-General know, that the stock of the U. S. could not issue, unless the continental certificates the counterparts of the New-Loans, or an equal value was previously surrendered to the United States; Mr. *Donnaldson*, the Register-General, you find, thought so. In his letter to the Governor (page 220-1-2) he repeats the same idea. I have but little to say on this point; Mr. *Donnaldson* first heard of this out of doors, and concurred in opinion with the defendant; he was never consulted; he passed some abstracts after he knew them to contain New-Loans, being pressed further, he acknowledged that he delivered one to Judge *Addison* in a mistake; there is no law of *Pennsylvania* authorising the surrender of the continental certificates, the whole amount would be lost as the New-Loans could not be charged against the United States.

I ask how will *Pennsylvania* get the stock back, I presume it will not be said that the Comptroller will give it up. Suppose now an Act was to pass this session, it is too late. The accounts between the United States and the individual states are now settled, they cannot be again opened; but it was hinted and but hinted by the Comptroller to the Register that he had or would settle that business with the Secretary of the Treasury of the United States. What! and no law on the subject! The subscription was prevented by the interposition of the Governor. Had the subscription of the New-Loan certificates been received, not only the difference between the stock and 20s. in the pound would have been a gain to the Comptroller-General, but the whole sum of 65,000 dollars subscribed, would be a loss to the commonwealth; and this was well known to the Comptroller-General.

But it is asked, why not pay 20s. in the pound? I answer for many reasons—1. the New-Loans were not a state debt. 2. It was a debt of Congress. 3. If Congress deviated from their contract, we ought not to suffer, nor
ought

ought their creditors to trouble us, when Congress was ready to pay them? there was a time when they might have had more than 20% in the pound from Congress.

4. *Pennsylvania* had said she would not pay them, and it is hard and humiliating that the Comptroller should controul the Assembly. And 5. Because Congress did not intend to assume any certificates but what had issued for services or supplies towards the prosecution of the late war, and the defence of the United States; and the New-Loan certificates are not charged by the Comptroller in the account.

But it is said, the Assembly is not to deal in stock— This is a mistaken idea of the dignity of government; I conceive that even the difference between the value of stock is not unworthy of Legislative interposition; that Legislature which disposes of a single dollar but to what it thinks to the best advantage of the public weal, betrays the trust of its constituents, whether it be stock or cash, property of one species or another. We are now on sure ground, our Treasury is full and overflowing, but there are difficult times in view, and probably the time is not far distant when we may want every shilling, and all our resources may be required to save the state from further taxes.

I will take the liberty to draw the attention of the Senate to the statement made by the defendant in 1788, this mentions the New-Loan debt. *That* being the year preceding the annihilating Act; but from the year 1789 the Legislature and Comptroller concur that the New-Loans were no longer a debt, or evidence of a debt; whereas they were a part of the state debt the year before. Whatever may be said of the views or the objects of the committee on ways and means, the duty of the Comptroller-General was as much to lay the same statements before the Assembly after the Act of 1789 as it was before, except so far as the same was varied by the repeal. On the 4th of November 1788, in the Comptroller's statement, page 7, we have the following entry :—

“ The New-Loan debt,

“ Amount whereof in specie and in certificates, on which an interest in specie is payable on the nominal amount, but the principal is to be reduced by a scale of depreciation £. 1,938,109 : 14 : 8. Of the above there have been redeemed by the sale of the city lots and Land office at last annual statement £. 57705 10 0
 “ Redeemed since by the same means 29261 0 0
 “ Balance on interest from different periods - - - 1351143 4 8

£. 1938109 14 8”

In his statement, November 4, 1787, he mentions the New-Loan debt, but we find no charge of this debt in the statement of the finances from this officer to the year 1790—Then the Governor in his speech to the Legislature, page 43, December 28, gives a statement which is not confined to demands requiring immediate payment, but for all the debts for which the state stands pledged, and mentions “ *balance of interest on the New-Loan certificates.*” Here can be no pretence, the whole aggregate of the debts of the commonwealth and only the *balance of interest on the New-Loan debt.* Where is the defendant’s letter to the Governor informing him of his mistake? This supposes his acquiescence as he did not contradict it; but in a few days after the Comptroller made his report to the Assembly, and being the first Assembly under the constitution, he enumerated all the debts and gave a history of the finances; if the Governor had made a mistake was it not the Comptroller-General’s duty to rectify it? In page 389 of the minutes, the New-Loans are stated expressly as excluded from redemption, except for the purpose of being re-exchanged; the Comptroller does not think it of importance to state what quantity had been re-exchanged, because he did not consider the state as liable for them.

The Legislature could not suppose that the Comptroller thought the law of 1789 to be void, or the law

of 1786 to be in force, except as to the funds, as he mentions all the items, funded, unfunded, &c.—and yet with regard to the New-Loan certificates, he states them as excluded from redemption, except the arrears of interest.

On the 8th of February 1791 the committee on ways and means reported a statement of all the debts of the commonwealth, in which they mention all the *claims* and *demands*, an universal expression embracing every species of debt; yet where that is expressed, neither the committee nor the Legislature consider the New-Loans as included. The Comptroller-General must have been acquainted with the Governor's statement in December 1790; and with the report abovementioned in February 1791; and if he differs in his statement therefrom, it is a proof that we are right. On the 30th of November 1791 there was a joint report of Mr. Nicholson, Mr. Donaldson and Mr. Febiger, upon a reference to which *Pennsylvania* proceeded when she prepared the law of the 10th of April 1792. (See appendix to the minutes of that year, the last page but one.) Here all the claims against the commonwealth are enumerated, and only the balance of interest on the New-Loan debt. If we are not determined against conviction, we must believe this to be the true state of the case.

I confess for my own part I am at a loss to think how language could be less doubtful and more plain or explicit. A very long course of correspondence was brought forward to shew, that whether ill or well founded, the Comptroller thought them subscribable in December 1791; what circumstances might have induced a change, I cannot tell, sufficient it is that they were not mentioned the 30th November 1790. And on the 30th of December 1791, he shews the Legislature he was of a contrary opinion.

I will dismiss this subject with a few remarks on the conference. Perhaps the attention of the Governor and fiscal officers were never called to the point because

no New-Loans were subscribed under the first loan; under this Act then, the question was not fairly litigated, as none were subscribed. True it is, that the Comptroller in some conversations spoke of them as being assumable, but it is sufficient to observe that had he communicated the Act of 1789 to Mr. *Hamilton*, his mind would have been clear, and all his doubts would be solved. He never suggested to any body, neither in writing nor conversation, that the New-Loans were redeemable under the Act of the 10th of April 1792.

He had some conversation with Mr. *Evans*, in which he stated that the stock was to be sold; but never mentioned to him that the New-Loans were redeemable. Mr. *Gallatin* says he went no farther than to say the Act included unfunded depreciation, and that afterwards when they were subscribed, he was surprised. This shews he designed to shelter himself under the letter of the law, contrary to what he knew to be the design of the Legislature.

Surprising, that when he hesitated about the depreciation certificates, he did not hesitate about the New-Loans! I will dismiss this point, and proceed to the charge which concerns—WITHDRAWING MONEY FROM THE TREASURY WITHOUT A PREVIOUS APPROPRIATION, &c.

This is proved beyond all possibility of controversy, the correspondence between the Comptroller-General and the Governor respecting the debt to be redeemed, and the stock to be sold prove this, for he furnishes an estimate of the whole; here he prevaricates, for being called upon in a general manner he answers in a restricted sense, surely it was his duty to render a just statement, but that rendered by him was covert and deceitful, the Governor's proclamation of the 16th of May 1792, which had been shewn to the Comptroller-General, founded on his estimate which enumerated the debts to be redeemed by the Act of 1792, and his not mentioning the error, is a proof that he acknowledged the statement to be right.

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By the constitution no money is to be drawn from the Treasury but by previous appropriations made by law: this is a principle of great importance, the only security against the improper use of public money, and introduced by the principles of liberty at the revolution in *England*. The Comptroller-General was paid, and relied on to preserve order in the finances. By the Act of the 4th April 1792 the Comptroller is directed to certify to the Governor out of what fund the money is to be drawn. (Mr. *Ingersoll* then turned to the Act page 219) when there are several funds in the same Act, it is necessary to specify the fund, but when there is but one fund, the practice is only to certify payable under such or such an Act. When the Governor draws his warrant he pursues the words of the certificate, the Governor by implication makes it payable accordingly, then what is the necessary result? Why! If the Comptroller and Register have not drawn their estimate accurately, the warrants of the first magistrate must be dishonoured, for just so much as 60,000 dollars take from that fund, just so much it falls short; and how do they get over this? Why! Forsooth no other way than, by the *extreme* and *monstrous*, I would say, absurdity, by taking the greater from the less, then apply this to the present case, it will be shewn that the Comptroller certified them to be payable out of the fund provided by the second section of the Act of 10th April, 1792, and it was acknowledged on all hands that there was no fund appropriated under that Act; then the Governor considered this as payable out of the fund provided by the second section, if then the funds were not provided by the Act, the Governor's warrants must be dishonoured. —The funds for claims and improvements which have been stated, only contained £.10,000, and £.5,000 of that were annually appropriated for roads, then as I said before, the greater must be taken out of the less— Surely this is so big with inconsistencies, such conduct cannot be reconciled with the duty of the Comptroller-General. (Mr. *Ingersoll* then read passages from the

law

law of the 26th March, 1789, which created the funds for claims and improvements, and observed that it underwent an alteration by the subsequent Act of the 7th April 1791)—from this time to the present, the Assembly, in every instance when they directed payment of any claim, always appropriated or created a fund for the purpose. Let us now examine the instances produced as furnishing the meaning of *claims*. (Mr. *Ingersoll* then cited the cases mentioned in pages 152-3-4 of this work, and some other of the same kind, as referring to special laws which directed the manner of payment.) The Act of April 4, 1792, directs the Comptroller to give the party a certificate, and to inform the House of it, when no funds were provided. I now proceed to the

FIFTH AND SIXTH ARTICLES.

(The articles last mentioned being read, Mr. *Ingersoll* proceeded, saying,)—

Here, Sir, as in the consideration of the article just past, are no circumstances to raise a doubt, no objections to unconstitutionality under the mask of patriotism. Whatever arguments may be brought up to support the redeemability of the New-Loans, here is no pretence; the evidence is so clear that it has forced an acknowledgment. Whenever the holder was willing to surrender to the commonwealth, the Comptroller-General could not deem it improper. When he undertook the trust he knew the terms of it; he was bound to do it under all the ties and solemnities of office. What are the facts? There are instances, *Biddle's* and *Oldden's*. No doubt can be entertained but his conduct here disappointed the state of the exchange, which she intended and wished to make.

Purchases in the market would in a degree interfere with the ultimate design of his agency. This perhaps would be carrying the rule too far. (Then Mr. *Ingersoll* went over the testimony of Mr. *Oldden* and Mr. *Biddle*, which see pages 243-4, and 239-40-41.)

What

What is *malum in se*, is contrary to the common law, and if it is of notorious evil, is indictable. There is no statute on the subject, but an indictment is maintainable. The property was vested in the state on its delivery to the Comptroller-General; neither party could be off, the indents being tendered or not could make no odds, while the price was uncertain no person could tell what he had to tender, until the Continentals were brought out and the interest calculated, when they were returned, they were to be cancelled. It was not necessary to pay the indents to complete the exchange and to vest the property in the commonwealth. I appeal to the gentlemen present, and affirm, that the certificates of *Oldden* could not be recovered from the Comptroller-General by an action of trover, and if burnt or destroyed whilst in his custody, would they not be lost as the property of the state? The moment they were returned, the commonwealth became a trustee for him, and Mr. *Nicholson* was the officer to carry the agreement into execution. (2 B. C. 447.)

I might enlarge on this argument by putting many cases relative to the exchange of horses, bonds, &c. This I will decline, and must acknowledge that I am glad to find myself so near the end.

SEVENTH ARTICLE.

This charge is supported in the first instance, by the testimony of *John Oldden*. It is supposed that one evidence is not sufficient to convict. I contend that one witness is sufficient in all cases except *treason* and *perjury*, 4 B. C. 451. That the reason for insisting on two witnesses in *high treason*, is principally designed for another purpose; in prosecutions for extortion, which imply an oath of office, one witness is sufficient.

(Mr. *Ingersoll* touched upon the testimony of *Blair M'Clenachan*, and insinuated that the *onus probandi* lay on the defendant, endeavoured to excuse Mr. *M'Clenachan* from the charges of loss of memory, adding that no man in the Senate could answer so many interrogatories.

terrogatories better than he did, had they been involved in so many long and complicated series of incidents; he adverted to the directions of Council, page 267, which he read, and said these were *prima facie* evidence, and must be considered as conclusive, except the Comptroller-General would come forward and shew how he came by the certificate for £. 3,275 : 19 : 4. That he endeavoured to discharge his duty, that he had steered a middle course and hoped the Senate would judge with candour, and decide with firmness.)

As the last Speaker seemed to lay particular stress on the directions of Council, Mr. *Gibson* rose and remarked, that these instructions were regularly attended to, and no alterations being suggested, the defendant could not be liable to any censure on that point.

Mr. *Morris* observed that the deposition on interrogatories of *Hans Hamilton* had been received. Whereupon Mr. *Ingersoll* remarked that one of his colleagues would attend to the conclusion, and that the rest of the gentlemen would resume their stations in the Supreme Court.

Adjourned.

In the House of Representatives the following entry is recorded :—

“ In conformity to the resolution of the 25th day of February last, the House resolved itself into a committee of the whole in order to attend the trial of *John Nicholson*, Comptroller-General.

“ The Speaker quitted the chair and Mr. *Nevill* was placed therein.

“ The committee of the whole then proceeded to the Senate-chamber for the aforesaid purpose.

“ After some time,

“ The committee of the whole returned to their own chamber,

The Chairman left the chair, and the Speaker resumed it.

“ The Chairman of the committee of the whole then reported

reported that they had attended the trial of *John Nicholson*, Comptroller-General.

“The Committee appointed to manage the trial on the articles of impeachment against *John Nicholson*, Comptroller-General, reported further progress, and that the Senate had adjourned until ten o'clock to-morrow morning for the further hearing of the counsel.”

Twenty-third day of the trial.

T U E S D A Y, MARCH 25.

THE Senate met, the consideration of Legislative business being postponed, and the House of Representatives attending as usual.

Mr. *Morris*, the Speaker, informed the gentlemen concerned in the trial, that it was agreed on by the Senate, that the arguments should be concluded by, and confined to one gentleman on each side. After which Mr. *Tilghman* arose and spoke as follows—

*Mr. Speaker, and
Gentlemen of the Senate,*

I WILL state on my part, what appears to me to be the true state of the case, with respect to the evidence. (Mr. *Ingersoll* interrupted him, and observed, that he had to answer to the charge respecting the certificates of *Hans Hamilton*; whereupon Mr. *Tilghman* waved going over the testimony, as he appeared to be about to do, and read the interrogatories of *Hans Hamilton*, and then the answers, and afterwards, read the interrogatories and answers alternately. Mr. T. then said,)—

The counsel for Mr. *Nicholson* will rest this business without any further observations than this, that the whole testimony of *Hans Hamilton*, negatives the inference, and repugns the idea of any exchange.

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Mr. Rawle

Mr. Rawle rose, and said,

IT falls to my lot to add a few observations on the testimony adduced to prove the charges against Mr. *Nicholson*; and I trust that it will appear to every clear headed man, that these charges are amply supported, and that the exchange was negotiated for *Hans Hamilton* by his agent. It claims peculiar attention, as it confirms one of the most serious charges, in which the official delinquency is aggravated by the extreme confidence reposed by the state in the defendant.

I must recal the attention of the Senate to the recollection of the preliminary introduction of this business by the learned manager, in which it had been stated from the New-Loan book A, (page 129,) that three certificates, No. 4,151, for £. 11:16:0; No. 4,152, for £. 268:0:0; and No. 4,153, for £. 242:7:6, were issued by the Comptroller-General under the Act of March 1786, in the name of *Hans Hamilton*.

From the book of Continental certificates received in exchange for New-Loans (page 230) it appears that sundry Continental certificates were received in exchange for them, agreeing exactly with the total amount of the three former certificates.

It appears by the certificate of the Register of the Treasury of the United States, dated March 4, 1794, that the Comptroller-General subscribed each of those identical certificates and individual numbers for, and in the name of *Hans Hamilton*. It likewise appears from the large abstract, No. 262, that these identical New-Loan certificates were subscribed by Mr. *John Nicholson* for his own use.

It therefore followed from the first impression, that the property of the state had been violated, that as she must have a property either in the New-Loans emitted, or in the Continental certificates received, as it never could be in *abeyance*, but if it ceases in the one, it must at the same time commence in the other. Either her New-Loans or her Continental certificates had been converted to private purposes.

Time

Time has been applied for and granted, and I trust the Senate will see, that the deposition of *Hans Hamilton* will be found to clear up the question, and to prove not how far the defendant is innocent, but in what manner he is guilty. It will be proved beyond a controversy, not that neither of them were the property of the commonwealth, but that the New-Loans were. That they were so rendered by an Act which he could only have performed by being Comptroller-General; it will be shewn, that precisely in the terms of the seventh article of impeachment, her New-Loans have been fraudulently converted by the Comptroller-General to his own private use and emolument.

First, By depositing Continental certificates under the Act of March 1786, the state acquired a qualified property in them—1. For safe-keeping. 2. To receive indents, this property might become absolute by the holders of New-Loans purchasing lands.

Secondly, After the 27th of March 1789 the holders of New-Loans had a right to, and acquired a property in the identical Continental certificates deposited by them. But this was not always practicable on account of the practice of exchanging, consolidating or cutting up certificates. To remedy, therefore, this inconvenience, other certificates, as the state had a large share of her own, were allowed to be returned in such cases. This was implied by the Act of March 27, 1789. Like optional powers were given in the instructions of the Supreme Executive Council, (see page 267) and by an Act of the first of April 1790. But where the New-Loans originally issued, and continued the same, where the Continental certificates originally deposited had not been delivered out to others, and where one remained to meet the other, the law and the instructions required the exchange to be specific; and it will not be disputed that where there existed no necessity of giving others, the Comptroller-General was to give the same, and no fair purpose could be answered by making it otherwise.

In the present instance they correspond precisely ; the original certificates issued by the United States were deposited by *Hans Hamilton*. He *Hans Hamilton* had received New-Loan certificates in lieu of them. I trust then, there can be no doubt under this point of view, but the New-Loan certificates became the property of the commonwealth. (The answers to the 1st and 2d interrogatories were then read.) If a commutation had been meditated it could be done immediately ; How then is this commutation effected ? *Ans.* The Comptroller-General takes the identical continental certificates, which were deposited with the state, and remained in her coffers, and subscribed them in the name of *Hans Hamilton*. Then, Sir, this was an *unlawful* or a *lawful* act. If it was intended to be subscribed for his own use, and not with a view to effectuate the re-exchange, which *Hamilton* desired, it was an unlawful and atrocious depredation of public property.

His counsel deny this.—

Then it was lawful ; it was done as Comptroller-General, regularly, officially and consistently with his duty, to effectuate the exchange, as the obliging friend of *Hans Hamilton*, and the public servant of *Pennsylvania* !

Then what was the legal result ? *Answer*, The New-Loans being thus satisfied by the parties receiving the original continental certificates in the form of funded debt, became again the *property* of *Pennsylvania*.

This would have been the result if only the value or amount in other certificates had been subscribed, but when the same continental certificates originally loaned are subscribed, and that too, after the holders come down to exchange them, and when the Comptroller-General was in possession of the New-Loans. (The answer to the 1st interrogatory then read.) This answer shews that transaction was so viewed by *Hans Hamilton* himself, he viewed no private bargain to vest the property of his New-Loans in *John Nicholson* and not in the commonwealth. He considered it as the effectuating

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ing the exchange, under the law of 1789, which he had not time to carry thro' himself, and little did he, or would any other plain and unskilful man conceive the monstrous idea that by delivering up the property of the state, a property in the New-Loans could be acquired by the officer.

This appears not to have occurred to the Comptroller-General until April 1792. If then the property deposited by *Hans Hamilton* actually belongs to the state, it cannot be the property of *John Nicholson*—What! my servant to take my property for the purpose of paying one of my engagements, and then allege it belongs to him? Notwithstanding all the technical difficulties of the statute of frauds, if my money is employed to buy a house it belongs to me altho' the deed may be in my agent's name; then most assuredly the property in the certificates in question is in the state. As an agent he received them from *Hans Hamilton*; but as Comptroller-General, as depository of the commonwealth he subscribed them; or if it is admitted that his subscribing, as Comptroller-General was illegal, he exchanged them as Comptroller-General, and subscribed them as the friendly agent of *Hans Hamilton*. We are not to be entangled by the acts of the Comptroller-General, he is not to be the agent of *Hans Hamilton* whilst he is acting as Comptroller-General of *Pennsylvania*; this double assumption of qualities is improper, but it was only as Comptroller-General he had access to the certificates, and the Comptroller-General was very remiss indeed, if he permitted the agent of *Hans Hamilton* to put his fingers into the public coffers of the state; in relation to the New-Loans he ceased to be the private agent as soon as the continental certificates were subscribed, for if *Hans Hamilton* had no more right, his agent had not, he had no other duties to perform in regard to them than as Comptroller-General.

What are his duties and powers? They are defined in the Act of the 1st April 1790. It was his duty to deliver them over to the Treasurer to be cancelled; as
Comptroller-

Comptroller-General, he had no power but to deliver them over for the above purpose; what has he done? They remain with him till, April 1792, when *Hans Hamilton* came to town and applied to his agent for the funded debt. (The defendant's 3d interrogatory and answer then read) I will not ask, Sir, why during this interval, the New-Loans were deposited with the Comptroller-General, after the continental certificates had been funded and were not delivered to be cancelled, why the indents were not adjusted, nor in short, why he did not perform his official duty in respect to them. The New-Loans, as well as the funded stock remained in his hands during this period; he confirms the transaction by receiving the interest; the continental certificates had been taken out of the trunk of the Comptroller-General—two things were then done.—1. *Hans Hamilton* lost his right to the New-Loans.—2. *Pennsylvania* lost her continental certificates.—What did *Hans Hamilton* receive? Funded stock. What did the commonwealth receive? A blank.

(Seventh article then read.) I say, this testimony is fuller than that of Mr. *McClenahan*. *Hans Hamilton* is an honest man; but we find the deposition turns out different from what they expected. I do not find that they prevailed in obtaining an exposition to their mind. Answers come out which the defendant did not expect. In all his interrogatories to the deponent, he mentioned nothing of *an agent*—he mentioned an *obligation*—and what became of it? Yet we find that *Hamilton* calls it an agency. *Hans Hamilton* had answered honestly. The *ex parte* deposition did not corrupt him. All his answers fully confirm the charge, and come literally within the seventh article. I will add no more; whatever doubts may be entertained elsewhere, here are no judicial speculations;—Acts of Assembly have been violated—the law is clear—and the facts are well supported.

Mr. *Tilghman* rose in reply, and said,

I AM glad the counsel who spoke last hath not embarrassed

barrassed the question to bring us to answer a charge brought against us by the House of Representatives. There is a way of attempting a thing, by communicating it in a gentle manner, when a man is willing to strike. I will leave it to the Senate whether the hint that is intended for the defendant, is worthy of those who brought it forward. Mr. *Nicholson's* conduct has ever been open and manly, and he must be acquitted of any design derogatory of that character.

Then I take the question solemnly to be, whether Mr. *Nicholson* acted in the line of his official duty, and whether he received those certificates from *Hans Hamilton* for the purpose of being exchanged? I take this to be a naked question of fact. I agree that a gentleman may act in two capacities. It hath been said that Mr. *Nicholson* acted in two capacities. Was he less sedulous for acting in the two-fold capacity of *John Nicholson*, and Comptroller-General? That he acted for *Hans Hamilton* as *John Nicholson* and not as Comptroller-General, and his doing or acting as agent for *Hans Hamilton* could not become a crime as Comptroller-General; no man could be prevented from acting as an agent for another unless restrained by positive laws. While he acted as Mr. *Nicholson* he is not liable to impeachment, I call upon the gentlemen to state where he acted as Comptroller-General in this affair? I consider it was lawful for him to act as a private citizen, without being impeachable before this honorable tribunal. I will not take the time to run over the answers of *Hans Hamilton*, he did not act in his official capacity, but he had been friendly, Mr. *Hamilton* said, "all I want is stock of the United States, I leave these certificates with you for that purpose," while he acted as Mr. *Nicholson* he is not liable to impeachment, I will take it for granted that Mr. *Nicholson* was the agent of *Hans Hamilton*, even, I will take it for granted, that Mr. *Nicholson* was mistaken—so far I take it for granted, that he has paid *Hans Hamilton* what *Hamilton* wished to have; by lodging those very certificates with Mr. *Smith*
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the continental Loan-officer, which *Hamilton* afterwards received. Here then is the candor of the defendant. Nay more, he received double the amount; and, here is venality charged against him in profusion! This does not favour their arguments, that he used the continental certificates improperly, but it is what the logicians call a *non sequitur*.

He applied to Mr. *Nicholson* as a friend not as an officer; does he come to Mr. *Nicholson*, and say, I wish to unite the characters of Agent and Comptroller-General? No, Sir, he negatives all official communications.—But again the gentlemen say, how could the Comptroller be in possession?

The gentlemen themselves have stated, that it was not essential to have the very identical ones, and the laws and instructions point out that their co-relatives could not always be at hand, that the practice was otherwise, at which many were much agitated, nay, offended, because they could not have their own returned to them.

I must beg the indulgence of the Senate, whilst I'll observe, that Mr. *Nicholson* was a holder of New-Loans to a considerable amount, why then as it is agreed that it is a species of criminality, if a doubt remains respecting these certificates, Why does not the doubt operate in favour of the defendant? Why not presume him innocent in some of these instances? Why not presume, that Mr. *Nicholson* obtained them some other way, by some exchange, or purchase of some other person? In either case Mr. *Nicholson* is far from guilt. Does *Hans Hamilton* say his continental certificates were returned? No.

The gentlemen have assumed the basis and reasoned ingenuously and subtilly that these continental certificates were in the coffers of the state, they have not trod tenderly on the Act of 1786; but let them not collect criminality from surmises, let them prove it, if the fact is capable of proof; that it was the property of *Pennsylvania* at that time, then one of two things must be the consequence,

consequence, either it follows that the Comptroller-General was excessively blameable by affecting to act as Comptroller-General; but in the mean time made use of his official advantages, and acted so as to be highly criminal.—Or that disrobing himself of his character, intruded his rash and sacrilegious hands into the coffers of the state! One or the other of these must be the case!

Has the prosecution altogether rested with the Comptroller-General? Have they a right to impeach the Comptroller and not to arraign *Hans Hamilton*? Do they not consider him charged? The evidence being that the transaction was of a private nature, and that he acted as the agent of *Hans Hamilton*. Where the Senate can make a favourable construction it is their duty nay it is not only their duty, but it is agreeable to their sensations. But when it appears from *Hans Hamilton's* depositions, that no continental certificates were ever delivered to him, how is the inference to be drawn without any premises to support it? But the case stands simply thus, We are charged with taking the New-Loan certificates of the state which had been exchanged by the state and applying them to our use.

What is the proof? Is there a particle of evidence in *Hans Hamilton's* deposition to shew that these were ever exchanged? *No.* Is there even a shadow of proof to shew that they had ever been presented for such exchange to the state? *No.* *Hans Hamilton* did not do it as he tells you upon oath, nor did he direct it to be done, and *Hans Hamilton's* testimony is full and clear in our favour: Here we might rest the cause without replying to any charges not in the impeachment.

But it is said, if this was not done, we must have taken the continental certificates, for which these had originally been loaned, for that, on turning to the book of continental certificates loaned which we have kept, and the abstract of continental certificates in the Treasury office of the United States and comparing the one with the other, they agree in dates and sums, altho'

we are not bound to reply to this aspersions until we are charged by the House of Representatives with *sequestering continental certificates the property of the state*, yet I will observe, 1. That to this comparison of dates and sums should be added another book, that of their re-exchange, whereby the state became divested of these continental certificates; here, you will find exchanges entered which were made for Mr. *Nicholson*, and corresponding in dates and interest as sufficient to identify the re-exchange, as the former doth the exchange; for the dates of interest, their amounts, and numbers are all that were recorded in either case, in these books which were directed in their form, by, and occasionally submitted to the Supreme Executive Council. Nor is this all, there are other exchanges the sums and dates of interest of which would apply to these certificates, and Mr. *Nicholson* might have bought them of others, who had previously exchanged them, but it is difficult to account for any transaction without a motive, and here there was no motive of interest to urge the Comptroller to lay his hands on these certificates, the property of the state, they were no better than a like amount of any other such continental certificates, and yet he was obliged to account for every dollar of these certificates in his hands, and pay over to the State-Treasurer such amounts as were not exchanged, so that, as the state could not lose on the one hand he being responsible, so neither could he have gained on the other.

Lastly. If it should be imputed to us that we have dealt unfairly by *Hans Hamilton*, for our conduct will bear the test in every view, either as an officer, or as an individual, we shew clearly from his testimony, that he was fully satisfied and hath got what he asked for, the certificates he thus wanted and received from Mr. *Nicholson*, were not granted by the Comptroller-General, but by the United States. In this transaction therefore, we not only did not act officially, but the business was not

to be transacted at all in the office where the mal-practice is charged.

In conclusion I beseech the Senate to consider, that miserable and wretched indeed must be the condition of officers if impeachments can be found where there is no offence against the law. A book of high estimation says, NO LAW, NO TRANSGRESSION.

Permit me to read the following passages from one of the most excellent of all books on prophane history, where he treats of the doctrine of constructive treasons. *Hume's History of England*, vol. 6, page 340.

“ Where has this species of guilt lain so long concealed ?* Where has this fire been so long buried, during so many centuries, that no smoke should appear, till it burst out at once, to consume me and my children ? Better it were to live under no law at all, and by the maxims of cautious prudence, to conform ourselves, the best we can, to the arbitrary will of a master ; than fancy we have a law on which we can rely, and find at last, that this law shall inflict a punishment precedent to the promulgation, and try us by maxims unheard-of, till the very moment of the prosecution. If I sail on the *Thames*, and split my vessel on an anchor ; in case there be no buoy to give warning, the party shall pay me damages : But, if the anchor be marked out, then is the striking on it at my own peril. Where is the mark set upon this crime ? Where is the token by which I should discover it ? It has lain concealed under water ; and no human prudence, no human innocence, could save me from the destruction with which I am at present threatened.

“ It is now full two hundred and forty years since treasons were defined ; and so long has it been, since any man was touched to this extent, upon this crime, before myself. We have lived, my lords, happily to ourselves at home : we have lived gloriously abroad, to the world : Let us be content with what our fathers have left us : Let not our ambition carry us to be more
learned

* Says *Strafford* in conclusion.

learned than they were, in these killing and destructive arts. Great wisdom it will be in your lordships, and just providence, for yourselves, for your posterities, for the whole kingdom, to cast from you, into the fire, constructive treasons, as the primitive christians did their books of curious arts, and betake yourselves to the plain letter of the statute, which tells you where the crime is, and points out to you the path by which you may avoid it.

“Let us not, to our own destruction, awake those sleeping lions, by rattling up a company of old records, which have lain, for so many ages, by the wall, forgotten and neglected. To all my afflictions, add not this, my lords, the most severe of any; that I, for my other sins, not for my treasons, be the means of introducing a precedent, so pernicious to the laws and liberties of my native country.

“However, these gentlemen at the bar say they speak for the commonwealth; and they believe so: Yet, under favor, it is I who, in this particular, speak for the commonwealth. Precedents, like those endeavoured to be established against me, must draw along such inconveniences and miseries, that, in a few years, the kingdom will be in the condition expressed in a statute of Henry IV.; and no man shall know by what rule to govern his words and actions.

“Impose not, my lords, difficulties insurmountable upon ministers of state, nor disable them from serving with chearfulness their king and country. If you examine them, and under such severe penalties, by every grain, by every little weight; the scrutiny will be intolerable. The public affairs of the kingdom must be left waste; and no wise man, who has any honor or fortune to lose, will ever engage himself in such dreadful, such unknown perils.

“My lords, I have now troubled your lordships a great deal longer than I should have done. Were it not for the interest of these pledges, which a saint in heaven left me, I should be loth”—Here he pointed to

to his children, and his weeping stopped him.*—"What I forfeit for myself, it is nothing: But, I confess, that my indiscretion should forfeit for them, it wounds me very deeply. You will be pleased to pardon my infirmity: Something I should have said; but I see I shall not be able, and therefore I shall leave it.

"And now, my lords, I thank God, I have been, by his blessing, sufficiently instructed in the extreme vanity of all temporary enjoyments, compared to the importance of our eternal duration. And so, my lords, even so, with all humility, and with all tranquillity of mind I submit, clearly and freely, to your judgments: And whether that righteous doom shall be to life or death, I shall repose myself, full of gratitude and confidence, in the arms of the great Author of my existence."

Mr. *Rawle* rose, and replied--

I DO not wonder that the Comptroller-General should be defended with so much ingenuity, and I am willing to justify his counsel for combining every necessary qualification and in selecting all the pathetic passages; and am also willing to do justice to my own feelings at the expence of my judgment; for I think we have nothing to do with the last, but I will leave him to that single plank on which he is to be saved from total ruin. There is but one main argument, and that is, Who is impeached? and whether the Comptroller is of a moral or a civil species of existence? Every species of offence is committed by the man; yes, by the man who holds the office. How then is a line to be drawn, between the man and the officer? The man has offended, and the officer is innocent! One of those offences come in virtue of his holding the office, therefore it did not become him to purchase. If he had been a private individual, another tribunal would be the proper one, and as such he could not be entitled to such a solemn trial as the present. (Mr. *Rawle* then read

* Here too Mr. *Tilghman* dropped the tear of sensibility, said it was too much for any man to read—and handed the book to another.

read some passages from 2 *Woodison*, page 602.) Here the Lord-Chancellor of *Great-Britain* was found guilty of bribery, one of the most exalted judges; agreeably to the arguments of the learned counsel for the defendant, he should not be impeached as Lord-Chancellor, but as a man. If Judges, if Privy-Counsellors and a Lord-Chancellor—and he too, a confidential adviser of his sovereign, is impeached, and these circumstances are not unlike the present, how much more proper it must be here, where trials by impeachment are embodied into our Constitution. When Mr. *Hamilton* was applied to officiate, he answered, that he applied privately to Mr. *Nicholson* to be his agent. Had he applied to Mr. *Nicholson* to make the exchange, he would no doubt have done it; there is no law on this subject, it would be a wholesome thing to make a law for such a purpose. It would ease a great deal of this embarrassment.

But it is said that as a private man, Mr. *Nicholson* is not liable to impeachment. That remains unproved. It is not to be presumed that he acquired a right by any subsequent transaction;—we have no light to guide us in these particulars, but *Hamilton* employed *Nicholson* as his agent—it was for his use and for his benefit;—Mr. *Nicholson* made use of his naked authority as an agent. Hence the offence of acting as Comptroller-General for the commonwealth, and acting as agent for *Hans Hamilton* is inferred.

Let us now put this in the most favorable point of view, and admit, that Mr. *Nicholson* owned these New-Loan certificates, or that he purchased them before they had been owned by *Hans Hamilton*. If he transacted the business which he afterwards did, laying *Hans Hamilton* entirely out of the question, still the heavy charges remain. Let us then hear no more of *Hans Hamilton*; let us infer from no presumption; we will take *Hans Hamilton's* testimony and the official transaction. The gentleman hath suggested nothing to prove that
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the Continental certificates were out and ceased to become the property of the state in September 1791.

A singular and romantic co-incidence of sums and dates, that it should again have come round, the identical Continental certificates were the property of the commonwealth in 1786, and of *John Nicholson* in 1791. We have proved that they were deposited in 1786; then if once in the custody of the state, on whom is it incumbent to shew, that they did not remain so? From whom is the information to come? From none, but from himself!

Are we then under all these circumstances to prove that they remained in the custody of the state? It is not by the aid of presumption, not by getting a stride of probability and galloping off, that we prove this. But we are told by *Hans Hamilton*, that they were not exchanged. But it is said, that exchange may inadvertently be taken for commutation, that in any dictionary you would find them convertible terms, and that their application is the same. Take it either way it is substantially the same: By that exchange it was to be converted by the Comptroller-General into debt of the United States. Let us suppose it either way, let us suppose it to be converted to stock of the United States previously subscribed. Then the charge remains, the form is only altered, the offence is the same, the certificates are purchased of *Hans Hamilton*; but to have it as the testimony runs, there is an exchange in view, this gentleman is the agent, and agreeably to the existing laws he transacts the business which no man in *Pennsylvania* could do but the Comptroller-General.

One more word about presumption, and that is, in favour of innocence. They say, "*Why do you not prove him criminal?*" We deem it fully so. Here is a tortuous and wrongful depredation of property. He is not to say, the charge is not supported by presumption without testimony, as presumption is disregarded in dealings. There is no circumstances in this transaction which I do not conceive of importance. Whether the certificates

certificates with which he is charged were more or less than those brought to him for the purpose of being exchanged; it is sufficient for us that he is charged with those, the transactions are traced and the accusation is proved, these bloody and mysterious volumes of arbitrary and let our proof be opposed to his matter of defence. It is not to be considered that he did so with all others.

I will detain the Senate no longer, I have concluded my arguments—the gentleman has advanced the case of lord *Strafford*—How is that like the present case? What analogy? He was one of the most distinguished and amiable of men without an imputation of vice; Is it upon construction of municipal laws which are not generally known that the present impeachment is founded, is this a law concealed, is it a law unknown, as *Strafford's* treasons? No, we have this law in our nature, it is a monitor, which no man can escape, as *Cicero* calls it, *Lex non scripta, sed nata, quam non didicimus, sed accepimus*—not received at school, but grew with life, against that law there is no statute. It is in positive testimony that the Comptroller-General had offended, and I appeal to this honorable court, that were there no other charge against him, and all other accusations for the injured interest of the commonwealth done away, he ought to be held up as a public example, that no station in life shall deter the hands of justice, nor no labours will be spared, that others may be deterred from violating her trusts in similar stations, and that the virtue and integrity of this republic will not bear official treachery.

In the minutes of the House of Representatives the following entry is inserted for the last time:—

“In conformity to the resolution of the 25th day of February last, the House resolved itself into a committee of the whole in order to attend the trial of *John Nicholson*, Comptroller-General.

“The Speaker quitted the chair and Mr. *Montgomery* was placed therein.

“The

“ The committee of the whole then proceeded to the Senate-chamber for the purpose aforesaid.

“ After some time,

“ The committee of the whole returned to their own chamber.

“ The Chairman left the chair, and the Speaker resumed it.

“ The Chairman then reported that the committee of the whole had attended the trial of *John Nicholson, Comptroller-General.*

“ The committee appointed to manage the trial of the articles of impeachment against *John Nicholson, Comptroller-General* reported that the counsel on the part of the commonwealth, as well as the counsel in defence of the said Comptroller-General had concluded their arguments, and that the final decision thereof now remains with the Senate.”

On a review of this trial, the Editor finds it proper to state that the Senators were qualified in the presence of *William Bradford, Esq.* one of the Judges of the Supreme Court of the commonwealth of *Pennsylvania*, in the Senate-chamber in the city of *Philadelphia*, on Wednesday the 8th day of January, 1794,

“ Well and truly to try, and a true judgment give, according to law and evidence between the commonwealth of *Pennsylvania* and *John Nicholson, Comptroller-General* of the said commonwealth, on articles of accusation and impeachment exhibited against him, the said *John Nicholson*, and now depending before Senate,” in the following manner, to wit,

1 *Anthony Morris*, Speaker, affirmed.

2 *William Bingham*, sworn.

3 *Robert Brown*, sworn.

4 *Lindsay Coats*, sworn.

5 *John Edie*, sworn.

6 *James Finley*, sworn.

7 *John Andre Hanna*, sworn.

8 *Gabriel Heister*, sworn.

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9 *John*

- 9 *John Hoge*, sworn.
- 10 *Thomas Jenks*, affirmed.
- 11 *Thomas Kennedy*, sworn.
- 12 *Michael Schmyser*, sworn.
- 13 *Alexander Scott*, sworn.
- 14 *John Sellers*, affirmed.
- 15 *Abraham Smith*, sworn.
- 16 *Richard Thomas*, affirmed.

And *William Hepburn* was sworn in the same manner as the other gentlemen were qualified, in the presence of *James Biddle*, Esq. the President of the court of Common Pleas of the city and county of *Philadelphia* on the 19th of February following, being the day appointed for trying the charges against Mr. *Nicholson* but was further postponed on account of the following representation from *William Lewis*, Esq. one of the counsel for the defendant, and *Jared Ingersoll*, Esq. Attorney-General for the state, which was read in the words following, to wit,

“SIR,

February 18th, 1794.

“WE have been so much engaged, and find ourselves so particularly so at present, that we do not think it possible for us, without extreme inconvenience, to attend to the trial of Mr. *Nicholson*, on his impeachment, before Wednesday, the twenty-sixth instant: We, therefore, take the liberty of uniting in an application to the honorable the Senate to postpone the trial until that day, and we beg that you will be so good as to communicate this our request to the honorable the Senate.

“We have the honor to be

with the highest sentiments of regard,
your friends and servants,

WILLIAM LEWIS,

JARED INGERSOLL.

“Honorable Mr. MORRIS.”

The following is the order in which it was taken up in the Senate—the proceedings are given here from the Journal of that honorable body.—

“WEDNESDAY,

“ WEDNESDAY, April 2, 1794.

“ Moved by Mr. Kennedy, seconded by Mr. Finley,

“ That the Senate will proceed to determine on the impeachment of John Nicholson, Comptroller-General of this commonwealth, article by article.

“ After debate,

“ The Senate adjourned to 4 o'clock in the afternoon.

“ *The same day in the afternoon.*

“ The Senate met according to adjournment.

“ The motion, made by Mr. Kennedy, respecting the trial of the Comptroller-General, was withdrawn.

“ Moved by Mr. Bingham, seconded by Mr. Scott,

“ That the Senate will proceed, to-morrow, on the trial of the articles of impeachment, as exhibited by the House of Representatives, against the Comptroller-General.

“ Moved by Mr. Finley, seconded by Mr. Hepburn,

“ That the word “to-morrow” be struck out and *Friday next* be inserted in place thereof.

“ The question being put, was carried in the negative.

“ Moved by Mr. Hoge, seconded by Mr. Hanna, and

“ Agreed, that the word to “morrow” be struck out and *Saturday next* be inserted in place thereof.

“ Moved by Mr. Hoge, seconded Mr. Thomas, and

“ Agreed, That the words “on the trial” be struck out and the words *take into consideration* be inserted in place thereof.

“ Moved by Mr. Hoge, seconded by Mr. Thomas,

“ That the words *with shut doors* be inserted next after the word “General.”

“ After debate,

“ The yeas and nays were called for by Mr. Finley and Mr. Edie, and

The question being put, the members voted as follow, viz.

“ Y E A S.

Y E A S.

1 Mr. Bingham,

5 Mr. Hanna,

2 Mr. Brown,

6 Mr. Heister,

3 Mr. Coats,

7 Mr. Hepburn,

4 Mr. Edie,

8 Mr. Hoge,

“ Y E A S.

“ Y E A S.

- 9 Mr. *Jenks*,
10 Mr. *Schmyser*,
11 Mr. *Scott*,

“ N A Y S.

- 1 Mr. *Finley*,
2 Mr. *Kennedy*,

Y E A S.

- 12 Mr. *Sellers*,
13 Mr. *Thomas*.

N A Y S.

- 3 Mr. *Smith*.

“ So it appeared, That there were thirteen yeas and three nays, and that the question was carried in the affirmative.

“ Whereupon, it was

“ *Resolved*, That the Senate will proceed, on Saturday next, to take into consideration the articles of impeachment, as exhibited by the House of Representatives, against the Comptroller-General, with shut doors.”

“ SATURDAY, *April 5*, 1794.

“ Moved by Mr. *Bingham*, seconded by Mr. *Schmyser*, and,

“ *Resolved*, That the doors of the Senate be closed in pursuance of the resolution of Wednesday, the second instant ;

“ And thereupon,

“ The doors of the Senate were closed accordingly.

“ Moved by Mr. *Hoge*, seconded by Mr. *Smith*, that it be

“ *Resolved*, That the Senate will, on next determine on the articles of accusation and impeachment exhibited by the House of Representatives, against *John Nicholson*, Comptroller-General of the commonwealth and that the question to be put to each Member shall be—“ Is *John Nicholson* guilty or not guilty of high misdemeanors charged upon him by the House of Representatives?” The answer shall be general if *not guilty*, but if *guilty*, shall specify on what article or articles he is *guilty*.

“ Moved by Mr. *Bingham*, seconded by Mr. *Thomas*,

“ That the words “ but if *guilty* shall specify on what article or articles he is *guilty*” be struck out.

“ After

“ After debate,

“ The question was put and carried in the negative,

“ Moved by Mr. *Coats*, seconded by Mr. *Bingham*,
and

“ Agreed, That the word “ shall” be struck out and the word *may* be inserted in place thereof.

“ The motion, as amended, was agreed to.

“ Moved by Mr. *Bingham*, seconded by Mr. *Smith*,
and

“ Agreed, That the further consideration of the subject be postponed until Monday next.

“ MONDAY, *April 7, 1794.*

“ According to the order of the day, the Senate resumed the consideration of the articles of impeachment as exhibited by the House of Representatives against the Comptroller-General.

“ Moved by Mr. *Hoge*, seconded by Mr. *Kennedy*,

“ That the Senate re-consider the resolution on the subject of the impeachment, agreed to on Saturday.

“ Moved by Mr. *Schmyser*, seconded by Mr. *Coats*,

“ That the consideration of the motion be postponed.

“ The question, on the motion being put, was carried in the negative.

“ The question, on the motion for re-considering the resolution, was put and carried in the affirmative.

“ Moved by Mr. *Hoge*, seconded by Mr. *Scott*,

“ That the word “ may” be struck out and the word *shall* be inserted in place thereof.

“ The question being put, was carried in the negative.

“ Moved by Mr. *Hoge*, seconded by Mr. *Scott*,

“ That the consideration of the resolution be postponed in order to take into consideration a resolution in the words following, to wit—

“ *Resolved*, That on Wednesday next the Senate will proceed to determine, article by article, the several articles of accusation and impeachment for high misdemeanors, exhibited, by the House of Representatives, against *John Nicholson*, Comptroller-General of this commonwealth,

commonwealth, and now depending before the Senate; that the question shall be—"Is *John Nicholson*, Comptroller-General, *guilty* or *not guilty*?" Which question shall be taken on each article and the votes entered on the Journal; and if, on any one or more of the said articles, on the question being taken as aforesaid, two thirds of the Senators present shall say *guilty*, the Speaker shall, on the Friday next following, pronounce the sentence of the Senate on such article or articles; but if two thirds of the Senators present shall not say *guilty* on any one of the said articles, then, on the Friday aforesaid, the Speaker shall declare, that *John Nicholson*, Comptroller-General, is *not guilty* of all or any of the said articles of accusation and impeachment for high misdemeanors, and shall discharge him accordingly.

"After debate,

"The yeas and nays, on the question, were called for by Mr. *Hoge*, seconded by Mr. *Smith*,

"And the question being put, the members voted as follow, to wit:

"Y E A S.

- 1 Mr. *Brown*,
- 2 Mr. *Edie*,
- 3 Mr. *Hanna*,
- 4 Mr. *Hoge*,

Y E A S.

- 5 Mr. *Kennedy*,
- 6 Mr. *Scott*,
- 7 Mr. *Sellers*,
- 8 Mr. *Smith*.

"N A Y S.

- 1 Mr. *Bingham*,
- 2 Mr. *Coats*,
- 3 Mr. *Finley*,
- 4 Mr. *Heister*,

N A Y S.

- 5 Mr. *Hepburn*,
- 6 Mr. *Jenks*,
- 7 Mr. *Schmyser*,
- 8 Mr. *Thomas*.

"So it appeared, That there were eight yeas and eight nays, and that the votes were equal;

"Whereupon,

"The Speaker voted in the affirmative, and so the question was carried in the affirmative.

"Moved by Mr. *Hoge*, seconded by Mr. *Smith*,

"That the motion be amended by striking out the words

words "Friday next" and inserting, in place thereof, the words *on a day to be fixed*.

"The question being put, was carried in the affirmative.

"Moved by Mr. Bingham, seconded by Mr. Thomas,

"That the motion be amended by inserting, next after the word "Journal," the words *after which a general question shall be put to each member*—"Is John Nicholson guilty or not guilty of a high misdemeanor as charged upon him in the articles of accusation and impeachment exhibited against him by the House of Representatives?"

"After debate,

"The yeas and nays were called for by Mr. Schmyser and Mr. Bingham;

"And, the question being put, the members voted as follow, to wit—

"Y E A S.

- 1 Mr. Bingham,
- 2 Mr. Coats,
- 3 Mr. Finley,
- 4 Mr. Heister,

Y E A S.

- 5 Mr. Hepburn,
- 6 Mr. Jenks,
- 7 Mr. Schmyser,
- 8 Mr. Thomas.

"N A Y S.

- 1 Mr. Brown,
- 2 Mr. Edie,
- 3 Mr. Hanna,
- 4 Mr. Hoge,

N A Y S.

- 5 Mr. Kennedy,
- 6 Mr. Scott,
- 7 Mr. Sellers,
- 8 Mr. Smith.

"So it appeared, That there were eight yeas and eight nays, and that the votes were equal;

"Whereupon,

"The Speaker of the Senate voted in the negative, and so the question was determined in the negative.

"Moved by Mr. Hoge, seconded by Mr. Smith, and

"Agreed, That the words "Friday next following" be struck out; and that, next after the word "sentence" the words *agreed upon by* be inserted; and that the word "aforesaid" be struck out and the words *next following* be inserted in place thereof.

"The

“ The question, on the resolution as amended, being put, was carried in the affirmative ; and so it was

“ *Resolved*, That on Wednesday next, the Senate will proceed to determine, article by article, the several articles of accusation and impeachment for high misdemeanors, exhibited, by the House of Representatives, against *John Nicholson*, Comptroller-General of this commonwealth and now depending before the Senate, that the question shall be—“ Is *John Nicholson*, Comptroller-General, *guilty* or *not guilty* ? Which question shall be taken on each article, and the votes entered on the Journal ; and if, to any one or more of the said articles, on the question being taken as aforesaid, two thirds of the Senators present shall say, *guilty*, the Speaker shall, on a day to be fixed, pronounce the sentence agreed upon by the Senate on such article or articles ; but if two thirds of the Senators present shall not say *guilty* on any one of the said articles, then, on the Friday next following, the Speaker shall declare, that *John Nicholson*, Comptroller-General, is *not guilty* of all or any of the said articles of accusation and impeachment for high misdemeanors and shall discharge him accordingly.

“ WEDNESDAY, *April 9, 1794.*

“ The resolution of the Senate, of Monday, the seventh instant, respecting the trial of *John Nicholson*, Comptroller-General of the commonwealth, was read ;

“ Whereupon,

“ It was moved by Mr. *Kennedy*, seconded by Mr. *Scott*,

“ That the doors of the Senate be shut.

“ After debate,

“ The Yeas and Nays were called for by Mr. *Hiefter* and Mr. *Finley* ; and,

“ The question being put, the members voted as follow, *to wit*,

“ Y E A S.

“ Y E A S.

- 1 Mr. Bingham,
- 2 Mr. Brown,
- 3 Mr. Edie,
- 4 Mr. Hanna,
- 5 Mr. Hepburn,
- 6 Mr. Hoge,

“ N A Y S.

- 1 Mr. Coats,
- 2 Mr. Finley,

Y E A S.

- 7 Mr. Jenks,
- 8 Mr. Kennedy,
- 9 Mr. Scott,
- 10 Mr. Sellers,
- 11 Mr. Smith,
- 12 Mr. Thomas.

N A Y S.

- 3 Mr. Hiefter,
- 4 Mr. Schmyser.

“ So it appeared, That there were twelve Yeas and four Nays, and that the question was carried in the affirmative; and the doors were shut accordingly.

“ Moved by Mr. Hoge, seconded by Mr. Smith,

“ That the question be put first to the Speaker, and then to the several Members of the Senate in alphabetical order.

“ After debate,

“ The question was put and carried in the affirmative.

“ Whereupon,

“ Article I. of the accusation and impeachment for high misdemeanors against *John Nicholson*, Comptroller General of the commonwealth of *Pennsylvania*, by the House of Representatives of the said commonwealth, in their name, and in the name of the people of *Pennsylvania*, exhibited to the Senate thereof was read; and,

“ The question—“ Is *John Nicholson*, Comptroller-General of this commonwealth, *guilty* or *not guilty* of the charges contained in this article as it stands?” being put, the Members, respectively, said as follow, *to wit*,

“ *Anthony Morris*, Speaker, said *not guilty*;

William Bingham said *guilty*;

Robert Brown said *not guilty*;

Lindsay Coats said *guilty*;

John Edie said *not guilty*;

James Finley said *guilty*;

John Andre Hanna said *not guilty*;

Gabriel Hiefter said *guilty*;

C c c c c

William

William Hepburn said *not guilty*;

John Hoge said *not guilty*;

Thomas Jenks said *guilty*;

Thomas Kennedy said *guilty*;

Michael Schmyser said *guilty*;

Alexander Scott said *not guilty*;

John Sellers said *not guilty*;

Abraham Smith said *not guilty*;

Richard Thomas said *guilty*.

“ So it appeared, That eight Members said *guilty*, and that nine Members said *not guilty*.

“ Article II. of the said accusation and impeachment was read, and the question thereon was put;

“ The respective Members said as follow, to wit,

“ *Anthony Morris*, Speaker, said *not guilty*;

William Bingham said *guilty*;

Robert Brown said *not guilty*;

Lindsay Coats said *guilty*;

John Edie said *not guilty*;

James Finley said *guilty*;

John Andre Hanna said *not guilty*;

Gabriel Hiefter said *guilty*;

William Hepburn said *not guilty*;

John Hoge said *not guilty*;

Thomas Jenks said *guilty*;

Thomas Kennedy said *guilty*;

Michael Schmyser said *guilty*;

Alexander Scott said *not guilty*;

John Sellers said *not guilty*;

Abraham Smith said *not guilty*;

Richard Thomas said *guilty*.

“ So it appeared, That eight Members said *guilty*, and that nine Members said *not guilty*.

“ Article III. of the said accusation and impeachment was read, and the question thereon was put.

“ The respective Members said as follow, to wit,

“ *Anthony Morris*, Speaker, said *not guilty*;

William Bingham said *not guilty*;

Robert Brown said *not guilty*;

Lindsay

Lindsay Coats said *not guilty*;
John Edie said *not guilty*;
James Finley said *guilty*;
John Andre Hanna said *not guilty*;
Gabriel Hiefter said *not guilty*;
William Hepburn said *not guilty*;
John Hoge said *not guilty*;
Thomas Jenks said *guilty*;
Thomas Kennedy said *not guilty*;
Michael Schmyser said *guilty*;
Alexander Scott said *not guilty*;
John Sellers said *not guilty*;
Abraham Smith said *not guilty*;
Richard Thomas said *not guilty*.

“ So it appeared, That three Members said *guilty*, and that fourteen Members said *not guilty*.

“ Article IV. of the said accusation and impeachment was read, and the question thereon was put;

“ The respective Members said as follow, to wit,

“ *Anthony Morris, Speaker*, said *not guilty*;

William Bingham said *guilty*;

Robert Brown said *not guilty*;

Lindsay Coats said *guilty*;

John Edie said *not guilty*;

James Finley said *guilty*;

John Andre Hanna said *guilty*;

Gabriel Hiefter said *guilty*;

William Hepburn said *guilty*;

John Hoge said *not guilty*;

Thomas Jenks said *guilty*;

Thomas Kennedy said *guilty*;

Michael Schmyser said *guilty*;

Alexander Scott said *not guilty*;

John Sellers said *not guilty*;

Abraham Smith said *not guilty*;

Richard Thomas said *guilty*.

“ So it appeared, That ten Members said *guilty*, and that seven Members said *not guilty*.

“ Article

“ Article V. of the said accusation and impeachment was read, and the question thereon was put ;

“ The respective Members said as follow, *to wit*,

“ *Anthony Morris, Speaker, said not guilty ;*

William Bingham said not guilty ;

Robert Brown said not guilty ;

Lindsay Coats said guilty ;

John Edie said not guilty ;

James Finley said guilty ;

John Andre Hanna said not guilty ;

Gabriel Hiefter said not guilty ;

William Hepburn said not guilty ;

John Hoge said not guilty ;

Thomas Jenks said guilty ;

Thomas Kennedy said guilty ;

Michael Schmyser said guilty ;

Alexander Scott said not guilty ;

John Sellers said not guilty ;

Abraham Smith said not guilty ;

Richard Thomas said guilty.

“ So it appeared, That seven Members said *guilty* and that ten Members said *not guilty*.

“ Article VI. of the said accusation and impeachment was read, and the question thereon was put ; The Members said as follow, *to wit*,

“ *Anthony Morris, Speaker, said not guilty ;*

William Bingham said guilty ;

Robert Brown said not guilty ;

Lindsay Coats said guilty ;

John Edie said not guilty ;

James Finley said guilty ;

John Andre Hanna said guilty ;

Gabriel Hiefter said guilty ;

William Hepburn said guilty ;

John Hoge said not guilty ;

Thomas Jenks said guilty ;

Thomas Kennedy said guilty ;

Michael Schmyser said guilty ;

Alexander Scott said not guilty ;

John Sellers said *not guilty* ;
Abraham Smith said *not guilty* ;
Richard Thomas said *guilty*.

“ So it appeared, That ten Members said *guilty* and that seven Members said *not guilty*.

“ Article VII. of the said accusation and impeachment was read, and the question thereon was put ;

“ The Members said as follow, *to wit*,

“ *Anthony Morris, Speaker*, said *not guilty* ;
William Bingham said *not guilty* :
Robert Brown said *not guilty* ;
Lindsay Coats said *not guilty* ;
John Edie said *not guilty* ;
James Finley said *guilty* ;
John Andre Hanna said *not guilty* ;
Gabriel Hiester said *guilty* ;
William Hepburn said *guilty* ;
John Hoge said *not guilty* ;
Thomas Jenks said *guilty* ;
Thomas Kennedy said *guilty* ;
Michael Schmyser said *guilty* ;
Alexander Scott said *not guilty* ;
John Sellers said *not guilty* ;
Abraham Smith said *not guilty* ;
Richard Thomas said *not guilty*.

“ So it appeared, That six Members said *guilty*, and that eleven Members said *not guilty* and that two-thirds of the Senators present have not said *guilty* on any one of the said articles.

“ Moved by Mr. *Hoge*, seconded by Mr. *Thomas*, that it be

“ *Resolved*, That on Friday next, at eleven o'clock the Senate will pronounce their final determination on the articles of accusation and impeachment, exhibited by the House of Representatives, against *John Nicholson*, Comptroller-General.

“ Moved by Mr. *Bingham*, seconded by Mr. *Schmyser*,

“ That the consideration of the motion be postponed

in order to take into consideration a motion, read by Mr. *Bingham*, in his place, in the words following, *to wit*,

“ *Resolved*, That an extract from the minutes be forthwith made out, relative to the decision of the Senate on the subject of the impeachment of the Comptroller-General, and transmitted to the House of Representatives.

“ The question, on the motion to postpone, being put, the votes were equal;

“ Whereupon,

“ The Speaker of the Senate voted in the negative, and so the question was determined in the negative.

“ The question, on the resolution, as moved by Mr. *Hoge*, seconded by Mr. *Thomas*, being put, was carried in the affirmative.

“ *Ordered*, That the Clerk present to the House of Representatives an extract of the said resolution; and that the Sergeant-at-Arms furnish the Comptroller-General with a copy of the same resolution, attested by the Clerk.”

Altho’ the doors were shut during the whole time the Senate were engaged in taking the question on each article, the decision transpired immediately, and it gave great satisfaction to the citizens, but it made a different impression on the managers and others in the House of Representatives and elsewhere :—therefore,

A motion was made then by Mr. *Evans*, seconded by Mr. *Tyson*, and read, as follows, viz.

“ Whereas *John Nicholson*, Comptroller-General of this commonwealth, has, by conduct unworthy of his trust, forfeited and lost the confidence of the citizens of *Pennsylvania*; thereby rendering it highly improper that he should any longer continue to enjoy any office of trust or profit in this commonwealth :—therefore,

“ *Resolved*, That a committee be appointed to draught an address to the Governor for the removal of the said *John Nicholson* from the office of Comptroller-General of this commonwealth.

“ A motion

“ A motion was made by Mr. Evans, seconded by Mr. Gartner,

“ To take up said resolution by special order for a second reading.

“ On the question, “ *Will the House agree to the same?*”

“ The yeas and nays being called by Mr. M'Lene, and Mr. Evans, were as follow, viz.

“ Y E A S.

- 1 Jacob Hiltzbeimer,
- 2 Benjamin R. Morgan,
- 3 Henry Kammerer,
- 4 Joseph Magoffin,
- 5 Thomas Britton,
- 6 Thomas Paul,
- 7 John Chapman,
- 8 Gerardus Wynkoop,
- 9 Ralph Stover,
- 10 Joseph Erwin,
- 11 John Ross,
- 12 Joseph Pierce,
- 13 James Morrison,
- 14 James Old,
- 15 John Whitehill,
- 16 Isaac Ferree,
- 17 Alexander Turner,
- 18 Philip Gartner,
- 19 John Montgomery,
- 20 Paul Groscop,

Y E A S.

- 21 Charles Shoemaker,
- 22 George Graff,
- 23 Abraham Bachman,
- 24 Abraham Cable,
- 25 Josiah Haines,
- 26 James Davidson,
- 27 Benjamin Lodge,
- 28 Abraham Hendricks,
- 29 John Minor,
- 30 Craig Ritchie,
- 31 John Macclay,
- 32 Cadwallader Evans,
- 33 Joseph Tyson,
- 34 John Sboemaker,
- 35 Isaiah Davis,
- 36 Christian King,
- 37 Ebenezer Bowman,
- 38 Nathaniel Newlin,
- 39 William West.

“ N A Y S.

- 1 Thomas Campbell,
- 2 Thomas Lilly,
- 3 James Kelly,
- 4 David Mitchell,
- 5 Jonas Hartzell,
- 6 John Moore,
- 7 Thomas Stokely,

N A Y S.

- 8 Benjamin White,
- 9 John Cuningham,
- 10 James M'Lene,
- 11 Anthony Kelker,
- 12 Andrew Forrest,
- 13 John Canan.

“ So it was determined in the affirmative.

“ And the said resolution being under consideration.

“ On

“On the question, “*Will the House agree to the same?*”

“The yeas and nays being called by Mr. *Evans*, and Mr. *Mitchell*, were as follow, viz.

“Y E A S.

- 1 *Jacob Hiltzbeimer,*
- 2 *Benjamin R. Morgan,*
- 3 *Henry Kammerer,*
- 4 *Joseph Magoffin,*
- 5 *Thomas Britton,*
- 6 *Thomas Paul,*
- 7 *John Chapman,*
- 8 *Gerardus Wynkoop,*
- 9 *Ralph Stover,*
- 10 *Joseph Erwin,*
- 11 *John Ross,*
- 12 *Joseph Pierce,*
- 13 *Matthias Barton,*
- 14 *James Old,*
- 15 *John Whitehill,*
- 16 *Isaac Ferree,*
- 17 *Alexander Turner,*
- 18 *Philip Gartner,*
- 19 *Thomas Lilly,*
- 20 *James Kelly,*
- 21 *David Mitchell,*
- 22 *John Montgomery,*

Y E A S.

- 23 *Paul Groscop,*
- 24 *Charles Shoemaker,*
- 25 *George Graff,*
- 26 *Abraham Bachman,*
- 27 *Abraham Cable,*
- 28 *Josiah Haines,*
- 29 *James Davidson,*
- 30 *Benjamin Lodge,*
- 31 *Abraham Hendricks,*
- 32 *John Minor,*
- 33 *Craig Ritchie,*
- 34 *John Macclay,*
- 35 *Cadwallader Evans,*
- 36 *Joseph Tyson,*
- 37 *John Shoemaker,*
- 38 *Isaiab Davis,*
- 39 *Christian King,*
- 40 *Ebenezer Bowman,*
- 41 *John Canan,*
- 42 *Nathaniel Newlin,*
- 43 *William West.*

“N A Y S.

- 1 *Thomas Campbell,*
- 2 *Jonas Hartzell,*
- 3 *John Moore,*
- 4 *Thomas Stokely,*
- 5 *Benjamin White,*

N A Y S.

- 6 *John Cuninghame,*
- 7 *James M'Lene,*
- 8 *Anthony Kelker,*
- 9 *Andrew Forrest.*

“So it was determined in the affirmative.

“Whereupon,

“Ordered, That Mr. *B. Morgan*, Mr. *Kelly*, and Mr. *Evans* be a committee to draught an address conformably to the said resolution.

“The

“ The clerk of the Senate being introduced presented to the chair an extract from the Journal of that House; and having withdrawn, the same was read, as follows, viz.

“ In SENATE. WEDNESDAY, April 9, 1794.

“ Resolved, *That on Friday next at eleven o'clock, the Senate will pronounce their final determination on the articles of accusation and impeachment exhibited by the House of Representatives against John Nicholson, Comptroller-General.*

Extract from the Journal,
TIMOTHY MATLACK,
Clerk of the Senate.”

“ The committee appointed for the purpose this forenoon, reported an Address to the Governor for the removal of *John Nicholson* from his office as Comptroller-General of this commonwealth, which was read, and

“ On motion and by special order the same was read the second time, and adopted, as follows, viz.

“ To THOMAS MIFFLIN, Governor of the commonwealth of Pennsylvania:—

“ The SENATE and HOUSE OF REPRESENTATIVES of the commonwealth of *Pennsylvania*,

“ *Respectfully represent,*

“ THAT, whereas *John Nicholson* was a person meriting and possessing the confidence of the freemen of this commonwealth and their representatives appointed Comptroller-General, and, in that official capacity, intrusted with many of its most important pecuniary concerns; but hath since the said appointment, conducted in such a manner as to forfeit that confidence, and thereby rendered himself unfit to be continued in the aforesaid office: We, therefore, considering ourselves as the constitutional guardians, as well of the property as of the rights of our fellow-citizens, do earnestly re-

D d d d d

commend

commend to you, that the said *John Nicholson* be removed from his office."

After which the Address was transmitted to the Senate for their concurrence.

SENATE, FRIDAY, *April 11, 1794.*

John Nicholson, Comptroller-General of the commonwealth of *Pennsylvania*, at the bar, (with two of his counsel.)*

"The Speaker of the Senate said—

"*JOHN NICHOLSON*, it has been resolved, That if two-thirds of the Senators present should not find you guilty on any one of the articles of accusation and impeachment, exhibited against you by the House of Representatives, the Speaker of the Senate should declare the same and discharge you.

"And the question, on the said articles, having been separately put, and two-thirds of the Senators present not having found you guilty on any one of them, *It is declared*, That you are not guilty of all or any of the misdemeanors charged upon you in the said articles of accusation and impeachment, and you are accordingly discharged."

After which *Mr. Nicholson* waited on the Governor and resigned the office of Comptroller-General, which he had held for twelve years.

The Senate, after their determination of the acquittal of the Comptroller, having resumed the consideration of Legislative business:—

"*Mr. Kennedy* called for the address to the Governor, presented, for concurrence, by the Clerk of the House of Representatives and read yesterday, and the same was again read; whereupon,

"It was moved by *Mr. Kennedy*, seconded by *Mr. Schmyser*,
"That

* The House of Representatives did not attend on this occasion, as they had been accustomed to do, and although their committee were directed (page 200) they did not officially report the final determination of the Senate thereon.

“ That the Senate concur the said address.

“ After debate, It was moved by Mr. *Hanna*, seconded by Mr. *Sellers*,

“ That the further consideration of the motion be postponed until to-morrow.

“ After debate,

“ The yeas and nays on the question, were called for by Mr. *Kennedy*, and Mr. *Schmyser*.

“ The question being put, the members voted as follow, to wit,

“ Y E A S.

- 1 Mr. *Brown*,
- 2 Mr. *Edie*,
- 3 Mr. *Hanna*,
- 4 Mr. *Hoge*,

Y E A S.

- 5 Mr. *Scott*,
- 6 Mr. *Sellers*,
- 7 Mr. *Smith*.

“ N A Y S.

- 1 Mr. *Bingham*,
- 2 Mr. *Coats*,
- 3 Mr. *Finley*,
- 4 Mr. *Hiefter*,
- 5 Mr. *Hepburn*,

N A Y S.

- 6 Mr. *Jenks*,
- 7 Mr. *Kennedy*,
- 8 Mr. *Schmyser*,
- 9 Mr. *Thomas*.

“ So it appeared, That there were seven yeas and nine nays, and that the question was carried in the negative.

“ On the question to concur the address, the yeas and nays were called for by Mr. *Schmyser* and Mr. *Kennedy*, and,

The question being put, the members voted as follow, to wit,

“ Y E A S.

- 1 Mr. *Bingham*,
- 2 Mr. *Coats*,
- 3 Mr. *Edie*,
- 4 Mr. *Finley*,
- 5 Mr. *Hanna*,
- 6 Mr. *Hiefter*,

Y E A S.

- 7 Mr. *Hepburn*,
- 8 Mr. *Jenks*,
- 9 Mr. *Kennedy*,
- 10 Mr. *Schmyser*,
- 11 Mr. *Smith*,
- 12 Mr. *Thomas*.

“ N A Y S.

- 1 Mr. *Brown*,
- 2 Mr. *Hoge*,

N A Y S.

- 3 Mr. *Scott*,
- 4 Mr. *Sellers*.

“ So

“ So it appeared, That there were twelve yeas and four nays, and that the question was carried in the affirmative.

“ *Ordered*, That an extract of the foregoing resolution be presented to the House of Representatives.”

The Address was presented to the Governor on the 14th by a joint committee of both Houses, the circumstances were as follow :—

“ And they also presented “ The address to the Governor,” on the subject of the removal of *John Nicholson*, Comptroller-General, from his office, to which the the Governor was pleased to deliver an answer, in writing, which Mr. *Hanna* read in his place, and presented the same to the chair.

“ Whereupon, the same was read as follows, *to wit*,

“ GENTLEMEN,

“ MR. *Nicholson* has superseded the necessity of a removal by resigning the office of Comptroller-General, which resignation I accepted on Tuesday last.

THOMAS MIFFLIN.

“ *April 14th, 1794.*

“ *Messrs. HANNA and HAINES,*
a committee of the Legislature
of Pennsylvania.” }

On Monday the 21st April, the House of Representatives took up the business of Mr. *Nicholson*, and disposed of the same in the following manner, with an apparent view to get rid of it, the adjournment being fixt for the next day.

“ The report of the committee to whom was referred the report of the committee appointed during the recess of the late House of Representatives to examine the official transactions of the Comptroller-General, read April 11th instant, was read the second time.

“ And the following resolution being under consideration, viz.

“ *Resolved*, That the Attorney-General be directed to institute a suit against *John Nicholson*, Comptroller-General

neral for the whole amount of the certificates issued to satisfy certain claims of clothing made in the name of fundry officers, including both the principal and interest paid by the state."

"It was,

"On motion of Mr. *Evans*, seconded by Mr. *Magoffin*,

"Ordered, That the same be referred to the Comptroller-General with instructions to make a report thereon to the next session of the Legislature.

"And the following resolution being under consideration, viz.

"Resolved, That a committee be appointed to bring in a bill to provide for the effectual settlement of the accounts of *John Nicholson*, Comptroller-General and Escheator-General."

"It was,

"On motion of Mr. *Evans*, seconded by Mr. *Wynkoop*,

"Ordered That the same be referred to the consideration of the next succeeding Legislature."

Same Day.

"Mr. *McLene* on behalf of himself and others asked and obtained leave to enter on the Journal of this House a protest against the resolution for taking up, by special order, for a second reading, a resolution which was moved and seconded for the appointment of a committee to draught an address to the Governor, for the removal of *John Nicholson* from the office of Comptroller-General, of this commonwealth, and presented the same to the chair, which is as follows, viz.

"A Protest against the Resolution for taking up, by special order, for a second reading, a resolution which was moved and seconded for the appointment of a committee to draught an address to the Governor for the removal of *John Nicholson* from the office of Comptroller-General of this commonwealth.

"WE

“ WE DISSENT, because,

“ AT the time of the said resolution being agreed to, the said *John Nicholson* stood impeached by the House of Representatives, *in their name, and in that of all the People of Pennsylvania*, of certain high crimes and misdemeanors in the discharge of his official duties; and as no judgment had been rendered, the said impeachment was still depending, and within the power of the Senate: We therefore consider the adoption of the resolution at that time as an infraction of the law, no less oppressive to the defendant than dangerous to the security of individuals; as derogatory to the justice and dignity of this House, and as highly disrespectful to the Senate and Governor of the commonwealth.

“ *As an infraction of the law, no less oppressive to the defendant than dangerous to the security of individuals*, because their safety and security depend on the pure and impartial administration of justice; and every thing which has a tendency to prejudice the public mind or to bias the Judges while a cause is depending, poisons the springs of justice, warps their steady and even course, and undermines the most valuable bulwark of security, which innocence can have. Hence it is that all publications, touching a cause depending, which are calculated to give a bias either way, are highly criminal.

“ If anonymous publications are considered as of this dangerous tendency, we conceive that a solemn vote by the House of Representatives, “*in their name, and in that of all the people of Pennsylvania,*” must be of a tendency equally dangerous. It is true, it may not have all the intended effect, yet since that is owing to the virtue and firmness of others, it affords no apology for the imprudence of such a measure. Whatever might be the motives, its tendency certainly was to prejudice the public mind while a prosecution was depending, and to bear down and oppress the accused, by assailing the minds of his judges with all the weight and influence of the most numerous branch of the Legislature; and, as if this was really intended, care was taken to introduce
the

the resolution, with a declaration that *John Nicholson* had, by conduct unworthy of his trust, forfeited and lost the confidence of the citizens of *Pennsylvania*; thereby rendering it highly improper that he should any longer continue to enjoy any office of trust or profit in this commonwealth. As publications of this nature by an individual, while a prosecution was depending, would be highly criminal; and as the House of Representatives had fulfilled their constitutional duty by impeaching and prosecuting the Comptroller; and as it remained for the senate to discharge their constitutional duty by determining on that impeachment, and for the Governor to discharge his constitutional duty by displacing the Comptroller, or continuing him in office, at least till judgment should be given by the Senate, we can conceive no apology for passing the resolution at that time. For these reasons we cannot but consider the resolution as an infraction of the law, no less oppressive to the accused than dangerous to the security of others.

“ We also consider it as derogatory to the justice and dignity of this House. Derogatory to its justice for the reasons already mentioned; and to its dignity, from the ardor and precipitancy with which it was hurried through the House. We say ardor and precepitancy, because, during the debate, a communication was received by the Speaker, from the Clerk of the Senate, that on the next day judgment on the impeachment would be pronounced, and yet without waiting even till the message was read, or announced from the chair, the resolution was by special order taken up, read a second time, and passed in opposition to all endeavours for a short delay. This we believe to be unexampled in Legislative bodies; and it appears to us to be the more exceptional, since a decent regard for the opinions of men seemed to require that the House of Representatives, being the accusers and prosecutors of the Comptroller, should have manifested their moderation and impartiality, by declining to usurp the province of judging on their own charges, at least until constitutional judges had determined on them. On the contrary,

contrary, as no time for consideration or enquiry was allowed, there is too much reason to believe that the proceeding will be viewed by impartial men, as partaking more of sudden or disappointed resentment, than of that just and dignified displeasure which becomes the Representatives of a great Republic.

“ We have said of judging on their own charges, because it is reasonable to suppose the answer, conveyed by the resolution, is founded on the matters charged in the articles of impeachment. It is true it is expressed in such general and indefinite terms, as to render it impossible to say whether it is grounded on them or indeed on any thing else, since it contains no specification of facts, nor the least hint of any particular matter to which it relates ; but as the Comptroller has not been called upon to answer any other charges than those which are mentioned in the articles of impeachment, nor had an opportunity of being heard in his defence, we are unwilling to suppose any member of this House capable of condemning him without a charge, and unheard on any other grounds.

“ We have said that we consider the adoption of the resolution at that time as highly disrespectful to the Senate and to the Governor. As highly disrespectful to the Senate, inasmuch as it relates to a prosecution depending before them, and is expressed in terms calculated to influence their decision. *The time, the manner and the extreme hurry with which it was hastened forward*, must carry to the minds of the Senate too strong evidence of a supposition prevailing in this House, that the Senate or some of its members, were not to be trusted with a decision, until they were influenced by a solemn resolution that “ *John Nicholson* had, by conduct unworthy of his trust, forfeited and lost the confidence of the citizens of *Pennsylvania*, thereby rendering it highly improper that he should any longer continue to enjoy any office of trust or profit in this commonwealth.”

“ And when we take into consideration the time of passing the resolution, we cannot but consider it as equally

ly disrespectful to the Governor, since it strongly implies either that he had neglected his duty by not having already displaced the Comptroller, or that it was apprehended he would neglect it in future by continuing him in office. While we admit the rights of the House to address the Governor, to remove an unworthy officer, we are far from agreeing that the Governor was to blame in not removing the Comptroller after the charges were brought against him, and while they were depending; since this would have amounted to a declaration on his part, that the Comptroller was unworthy of trust and confidence, before either his innocence or guilt had appeared on a fair trial. If after a decision by the Senate the Governor had continued the Comptroller in office, this House had thought him unworthy of it, there might have been a propriety in addressing for his removal; but to do this at a time when the Governor could not with propriety displace him, when it was known that the difficulty would on the next day be removed, appears too much like converting the right of addressing into a vehicle of general and unqualified censure, both upon the officer who may have incurred the displeasure of the House, and upon the Governor for not adding his weight to that displeasure or censure, by displacing the accused before his innocence or guilt had been established on a fair trial. Under this view of the matter, we cannot but consider the proceedings against which we protest, as an usurpation of unconstitutional and arbitrary power, and an attempt to disfranchise a citizen, by voting him *unworthy of any office of trust or profit*.

“Under these impressions, we protest against the resolution referred to, and have recorded our reasons in justification of our conduct.

“ Thomas Campbell,	Benjamin White,
James M'lene,	Thomas Stokely,
Andrew Forrest,	John Cuningham,
John Moore,	Jonas Hertzell.”

E e e e e

The

The next day.

“Mr. *Benjamin Morgan*, in behalf of himself and others, asked and obtained leave to enter their Reply to the Protest of the minority of the House of Representatives against taking up by special order for a second reading a resolution for the appointment of a committee to draft an Address to the Governor for the removal of *John Nicholson*, Comptroller-General of this commonwealth, on the Journal of the House; and presented the same to the chair, which is follows, viz.

“Reply to the Protest of the minority of the House of Representatives against taking up, by special order, for a second reading, a Resolution for the appointment of a committee to draught an address to the Governor for the removal of *John Nicholson*, Comptroller-General of this commonwealth.

“THAT at the time of passing the said resolution, the Senate had decided on the Articles of Impeachment against the said *John Nicholson*, Comptroller-General of this commonwealth; and although they had neither pronounced judgment nor convicted the said *John Nicholson* on any of the articles exhibited against him, yet so large a proportion as ten out of seventeen, (the whole number of Senators present), having declared him guilty on two of the most serious of the said articles, it would have been highly improper in the Legislature not to have made use of every lawful means, to prevent him from continuing a moment longer in office. Had they acted otherwise, it would in their apprehension have been an unpardonable breach of the confidence reposed in them by their constituents; nor could they have expected their vote on the said resolution would have any such influence on the decision of the Senate, as is suggested in the said protest; the said decision having previously taken place; and though not directly communicated to the House of Representatives, must have been as well known to the minority as it was to the other members of that House. On this ground alone, we consider

Under the said vote and resolution not only justifiable but necessary, even had there been no other causes of removal than those contained in the Articles of Impeachment.

“Independently however of any thing contained in the said articles, we consider the Comptroller’s refusal to produce to the committee of investigation, appointed by the last House of Representatives, any of the books, vouchers or papers relative to the certificates issued to the *Pennsylvania* line for the arrears of their pay, a sufficient cause of removal; and were any thing wanting to aggravate his conduct in this instance, it was sufficiently supplied by his subsequent refusal to comply with the peremptory orders of the Governor on the same subject.

“There is some difficulty in reconciling the different objections offered by the protesting minority; the principal part of which rest on the supposed influence the resolution would produce in the decision of the Senate, when that minority state in their protest itself, that before any vote had been taken on the said resolution, an official communication was received from the Senate, informing the House of Representatives that on the next day judgment would be pronounced on the impeachment, which could only be the consequence of a decision having previously taken place.

“April 22d, 1794.

“ Benjamin R. Morgan,	George Graff,
Matthias Barton,	John Ross,
Cadwallader Evans, jun.	Jacob Hiltzbeimer,
John Chapman,	Alexander Turner,
Gerardus Wynkoop,	Abram. Hendricks,
John Shoemaker,	Baltzer Gebr,
Joseph Magoffin,	Isaiab Davis,
Craig Ritchie,	Abraham Cable,
Abraham Bachman,	Ralph Stover,
Thomas Paul,	Christian King,
Nathaniel Newlin,	Paul Groscof,
	Thomas

Thomas Britton,
Joseph Pierce,
William West,
James Davidson,
Isaac Ferree,
James Morrison,
Henry Kammerer,

John Minor,
Joseph Tyson,
Nicholas Lutz,
Joseph Erwin,
Ebenezer Bowman,
John Bratton,
James Old."

A short view of the votes of the Senators on Mr. NICHOLSON'S Trial.

<i>Articles of Impeachment.</i>	I.	II.	III.	IV.	V.	VI.	VII.
Mr. Morris, Speaker, -	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Mr. Bingham, - -	G.	G.	N.G.	G.	N.G.	G.	N.G.
Mr. Brown, - -	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Mr. Coats, - -	G.	G.	N.G.	G.	G.	G.	N.G.
Mr. Edie, - -	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Mr. Finley, - -	G.	G.	G.	G.	G.	G.	G.
Mr. Hanna, - -	N.G.	N.G.	N.G.	G.	N.G.	G.	N.G.
Mr. Hiestler, - -	G.	G.	N.G.	G.	G.	G.	G.
Mr. Hepburn, - -	N.G.	N.G.	N.G.	G.	N.G.	G.	G.
Mr. Hoge, - -	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Mr. Jenks, - -	G.	G.	G.	G.	G.	G.	G.
Mr. Kennedy, - -	G.	G.	N.G.	G.	G.	G.	G.
Mr. Schmyser, - -	G.	G.	G.	G.	G.	G.	G.
Mr. Scott, - -	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Mr. Sellers, - -	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Mr. Smith, - -	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Mr. Thomas, - -	G.	G.	N.G.	G.	G.	G.	N.G.

E R R A T A.

In page 584 in the 3d and 5th lines from the bottom strike out 20th and insert 30th.

In page 591 read the third and fourth lines, and then the first and second ones, and proceed.

Expunge *not* in the 11th line page 756.

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